# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

# No. 191

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., A CORPORATION, PETITIONERS,

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD, ET AL.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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INDEX


| | Original | Print |
|---|---|---|
| Proceedings in the Supreme Court of the State of California | a | 1 |
| Record on review from Superior Court of the State of California in and for the County of Los Angeles | a | 1 |
| Appearances | a | 1 |
| Summons | 1 | 2 |
| Complaint for injunction and damages | 8 | 7 |
| Exhibits "A" and "B"—Photographs | 52a | 40 |
| Exhibit "C"—Bill of lading | 52c | 40 |
| Affidavit of Ted Ehler of May 22, 1946 | 53 | 41 |
| Affidavit of Tony Sinozich | 56 | 42 |
| Affidavit of Ted Ehler of May 21, 1946 | 59 | 44 |
| Affidavit of Louis M. Clemens | 66 | 49 |
| Plaintiff's points and authorities on application for temporary restraining order and preliminary injunction | 68 | 51 |
| Temporary restraining order and order to show cause | 74 | 54 |
| Demurrer of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848 | 77 | 56 |


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—7450

| | Original | Print |
|---|---|---|
| Record on review from Superior Court of the State of California in and for the County of Los Angeles—Continued | | |
| Demurrer of Bee Schmidt, et al. | 80 | 57 |
| Affidavit of Bee Schmidt | 89 | 65 |
| Affidavit of Minnie Hill | 90 | 66 |
| Affidavit of Ted Wills | 91 | 66 |
| Affidavit of George Rollis | 93 | 67 |
| Demurrer of Defendants, Grocery Warehousemen's Local 595 and Ralph Woolpert, etc. | 96 | 69 |
| Motion of Ralph Woolpert to strike | 101 | 72 |
| Affidavits of service | 103 | 74 |
| Affidavits of Ted Ehler and Roy Farmer in support of citation for contempt | 105 | 75 |
| Joint affidavits of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull in support of plaintiff's application for the alleged contempt of G. (Gay) Lillefloren | 107 | 76 |
| Affidavit for contempt and petition for order to show cause of Roy F. Farmer | 114 | 81 |
| Order to show cause why Gay Lillefloren and Syl Sylvane should not be punished for contempt of Court | 132 | 95 |
| Order to show cause why Homer Ford, Russell Marks and Ivy Magisen should not be punished for contempt of court | 134 | 96 |
| Affidavit for contempt and petition for order to show cause of Ray Farmer—contempt of Homer Ford, Russell Marks and Irv Magisen | 136 | 97 |
| Demurrer of defendant, L. L. Sylvaine, to petition re-contempt | 151 | 107 |
| Supplemental joint affidavits of Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull in support of the plaintiff's application for contempt proceedings as against G. (Gay) Lillefloren | 153 | 108 |
| Affidavits of Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull in support of plaintiff's application for contempt proceedings against the defendant, Syl Sylvane, also known as L. L. Sylvane | 160 | 113 |
| Minute order of hearing | 165 | 116 |
| Minute order re motion to quash | 166 | 116 |
| Answer of defendant Gay Lillefloren to the order show cause in re contempt | 167 | 117 |
| Memo. of opinion | 168 | 118 |
| Demurrer of Gay Lillefloren to order to show cause in re contempt | 169 | 118 |
| Minute order re rulings on certain demurrers | 173 | 121 |
| Minute order re argument and submission | 174 | 122 |
| Affidavits. In the matter of Homer Ford, Russell Marks and Irv Magison, charged by affidavit with contempt of court | 175 | 122 |
| Judgment and warrant of commitment on conviction of contempt of court by Homer Price | 178 | 124 |
| Judgment and warrant of commitment on conviction of contempt of court by Russell Marks | 189 | 131 |


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| | Original | Print |
|---|---|---|
| Record on review from Superior Court of the State of California in and for the County of Los Angeles—Continued | | |
| Judgment and warrant of commitment on conviction of contempt of court by Irv. Magison | 199 | 138 |
| Judgment and warrant of commitment on conviction of contempt of court by Gay Lillefloren | 209 | 146 |
| Judgment and warrant of commitment on conviction of contempt of court by Syl Sylvane | 224 | 156 |
| Minute order of September 17, 1946 | 239 | 167 |
| Minute order of September 20, 1946 | 240 | 168 |
| Clerk's certificate (omitted in printing) | 241 | |
| Response of Farmer Bros. Co., objections to granting review, authorities in support of judgment | 246 | 169 |
| Minute order of November 27, 1946, setting cases for hearing | 264 | 180 |
| Minute order of argument | 265 | 181 |
| Opinion of Supreme Court of California in case of In re W. T. Blaney | 267 | 181 |
| Opinion in case at bar | 304 | 215 |
| Petition for rehearing | 311 | 217 |
| Order denying rehearing | 327 | 229 |
| Clerk's certificate (omitted in printing) | 328 | |
| Order extending time to file petition for certiorari | 330 | 229 |
| Order allowing certiorari | 331 | 230 |

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[fol. A]

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. No. 19904

GAY LILLEFLOREN, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

L. A. No. 19909

RUSSELL MARKS, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

L. A. No. 19921

L. L. SYLVANE, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

L. A. No. 19922

HOMER FORD, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

No. L. A. 19923

IRV MAGISEN, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

**Record on Review**—Filed January 6, 1947

APPEARANCES:

Harold W. Kennedy, County Counsel, 1100 Hall of Records, Los Angeles, California;

William E. Lamoreaux, Deputy County Counsel, 1100 Hall of Records, Los Angeles 12, California, Attorneys for Respondent, The Superior Court.

Rupert B. Turnbull and Russell E. Parsons, 306 West Third Street, Los Angeles 13, California, Attorneys for Respondent, Farmer Bros. Co., a corporation.

David Sokol, 354 South Spring Street, Los Angeles, California, Attorney for Petitioners, Homer Ford, L. L. Sylvaine and Irv Magisen.

V. P. Lucas, 215 West Fifth Street, Los Angeles 13, California, Attorney for Petitioners, Gay Lillefloren and Russell Marks.

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[fol. 1] No. 514535

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

FARMER BROS. Co., a Corporation, Plaintiff,

vs.

WHOLESALE DELIVERY DRIVERS AND SALESMEN'S UNION, LOCAL No. 595, affiliated with International Brotherhood of Teamsters, Chauffe-rs, Warehousemen and Helpers of America, an international union affiliated with American Federation of Labor, et als., Defendants

SUMMONS—Filed December 27, 1946

Action brought in the Superior Court of the County of Los Angeles and complaint filed in the office of the Clerk of the Superior Court of said county.

The People of the State of California Send Greetings to:

Wholesale Delivery Drivers and Salesmen's Union, Local 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an international union affiliated with the A. F. of L.; Grocery Warehousemen's Local No. 595, affiliated [fol. 2] with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F.

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of L.; Local 431, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; General Teamsters Union, Local No. 431 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the A. F. of L.; Central Labor Council of Santa Barbara, California, affiliated with A. F. of L.; Culinary Alliance and Bartenders Local No. 498, affiliated with A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an international union affiliated with A. F. of L., and an unincorporated association and labor union; Thomas L. Pitts, Secretary-Treasurer of Local No. 848 Wholesale Delivery Drivers and Salesmen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Thomas L. Pitts; Joint Council of Teamsters No. 42, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Gay Lillefloren, individually and as agent of Wholesale Drivers and Salesmen's Union Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of [fol. 3] America, affiliated with A. F. of L.; Ralph Woolpert, individually and as Secretary-Treasurer and agent of Grocery Warehousemen's Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Russell Marks, individually and as agent of the defendant labor unions just hereinabove named; Irv Magisen, individually and as agent and representative of the labor unions just hereinabove named; Homer Ford, individually and as agent of the labor unions just hereinabove named; Irvin U. Gustafson, individually and as agent of the labor unions just hereinabove named; Syl Sylvane, individually and as agent of the labor union just hereinabove named; John Doe Bowers, individually and as agent of the labor unions just hereinabove named; Bee Tumber, individually and as business representative of and secretary of Culinary Alliance and Bartenders Local No. 498, affiliated with A. F. of L.; Ted Willis, individually and as agent of General Teamsters Union, Local No. 431, of International Brotherhood of Teamsters, Chauf-

feurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; George Rollis, individually and as agent of Culinary Alliance and Bartenders Local 62, affiliated with A. F. of L.; John Doe Annand, individually and as agent of the labor unions just hereinabove named; John Doe One to John Doe Twenty, inclusive; Mary Roe One to Mary Roe Twenty, inclusive; Doe One Association to Doe Twenty Association, inclusive; Black & White Corporations, 1 to 5, inclusive; Richard Roe 1 to Richard [fol. 4] Roe 10, inclusive; Southern Pacific Company, a corporation; A. V. Anderson, individually and as General Freight Agent of said Southern Pacific Company; California Motor Express, Ltd., a corporation; Los Angeles-Albuquerque Express, a corporation; Railway Express Agency, a corporation; Western Truck Lines, Ltd., a corporation; Teskey Transportation Company, a corporation; Crow Transportation Company, a corporation; Local No. 388, International Printers, Pressmen and Assistants, affiliated with A. F. of L.; Walter Turner, individually and as Secretary of Local 388, International Printers, Pressmen & Assistants, affiliated with A. F. of L.; United Parcel Service, a corporation; Jane Doe Finnegan, individually and as agent of Food and Drug Council of Los Angeles, affiliated with A. F. of L.; Food and Drug Council of Los Angeles, affiliated with A. F. of L., defendants:

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or will apply to the court for any other relief demanded in the complaint.

[fol. 5] Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 21 day of May, 1946.

J. F. Moroney, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by S. Smuckler, Deputy. (Seal Superior Court, Los Angeles County.)

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**Appearance:**

"A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the clerk.

[File endorsement omitted.]

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[fol. 6] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 514535

FARMER BROS. CO., a Corporation, Plaintiff,

vs.

WHOLESALE DELIVERY DRIVERS AND SALESMEN'S UNION, LOCAL No. 595, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an International Union Affiliated With the American Federation of Labor; Grocery Warehousemen's Local No. 595, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; Local 431, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; General Teamsters Union, Local No. 431, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; Central Labor Council of Santa Barbara, California, Affiliated With American Federation of Labor; Culinary Alliance and Bartenders Local No. 498, Affiliated With American Federation of Labor; International Brotherhood of Teamsters, Chauf-

feurs, Warehousemen and Helpers of America, an International Union Affiliated With American Federation of Labor and an Unincorporated Association and Labor Union; Thomas L. Pitts, Secretary-Treasurer of Local No. 848, Wholesale Delivery Drivers and Salesmen's Union, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; [fol. 7] Thomas L. Pitts; Joint Council of Teamsters No. 42, Affiliated With International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America; Gay Lillefloren, Individually and as an Agent of Wholesale Drivers and Salesmen's Union Local No. 848, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; Ralph Woolpert, Individually and as Secretary-Treasurer and Agent of Grocery Warehousemen's Local No. 595, Affiliated With International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; Russell Marks, Individually and as Agent of the Defendant Labor Unions Just Hereinabove Named; Irv Magisen, Individually and as Agent and Representative of the Labor Unions Just Hereinabove Named; Homer Ford, Individually and as Agent of the Labor Unions Just Hereinabove Named; Irvin U. Gustafson, Individually and as Agent of the Labor Unions Just Hereinabove Named; Syl Sylvane, Individually and as Agent of the Labor Unions Just Hereinabove Named; John Doe Bowers, Individually and as Agent of the Labor Unions Just Above Named; Bee Tumber, Individually and as Business Representative of and Secretary of Culinary Alliance and Bartenders Local No. 498, Affiliated With American Federation of Labor; Ted Willis, Individually and as Agent of General Teamsters Union, Local No. 431, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affiliated With American Federation of Labor; George Rollis, Individually and as Agent of Culinary Alliance and Bartenders Local No. 62, Affiliated With American Federation of Labor; John Doe Annand, Individually and as [fol. 8] Agent of the Labor Unions Just Hereinabove Named; John Doe One to John Doe Twenty, Inclusive;

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Mary Roe One to Mary Roe Twenty, Inclusive; Doe One Association to Doe Twenty Association, Inclusive; Black & White Corporations, 1 to 5, Inclusive; Richard Roe 1 to Richard Roe 10, Inclusive; Southern Pacific Company, a Corporation; A. V. Anderson, Individually and as General Freight Agent of Said Southern Pacific Company; California Motor Express, Ltd., a Corporation; Los Angeles Albuquerque Express, a Corporation; Railway Express Agency, a Corporation; Western Truck Lines, Ltd., a Corporation; Teskey Transportation Company, a Corporation; Crow Transportation Company, a Corporation; Local No. 388, International Printers, Pressmen & Assistants, Affiliated With A. F. of L.; Walter Turner, Individually and as Secretary of Local 388, International Printers, Pressmen & Assistants, Affiliated With A. F. of L.; United Parcel Service, a Corporation; Jane Doe Finnegan, Individually and as Agent of Food and Drug Council of Los Angeles, Affiliated With A. F. of L.; Food and Drug Council of Los Angeles, Affiliated With American Federation of Labor, Defendants

COMPLAINT FOR INJUNCTION AND DAMAGES—Filed May 21, 1946

Comes now the plaintiff and for cause of action against the defendants, and each of them, alleges:

I

That the plaintiff Farmer Bros. Co. is a corporation organized under the laws of the State of California and has been such a corporation for more than twenty years immediately last past, having its principal place of business at Los Angeles, California, and maintaining its offices and coffee roasting plant at 3828 South Main Street, Los [fol. 9] Angeles, California, its coffee warehouse at 3809-3815-3817 South Main Street, Los Angeles, California, and its urn manufacturing plant at 126 West 39th Street, Los Angeles, California. That plaintiff is engaged in the business of roasting, packaging and distributing and selling coffee, tea and spices, together with restaurant crockery, to cafes, restaurants, coffee shops and institutions. That the plaintiff is also engaged in manufacturing and assembling coffee-brewing and coffee-dispensing machin-

ery, stoves and urns. That the business of the plaintiff is not only intra-state but inter-state, and the plaintiff's products, coffee, tea, spices, coffee dispensing machinery and urns have been shipped and are shipped from the plaintiff's plants in Los Angeles, California, to various points in the States of California, Oregon, Nevada, Arizona, Idaho, Texas, Utah and New Mexico. That the plaintiff's business is highly competitive and there are, in the County of Los Angeles, approximately twelve (12) rival and competitive companies and firms similarly engaged. That during some twenty years immediately preceding the filing of this action, the plaintiff, by its consistent and standard blending of coffees and its prompt delivery of its products and merchandise, has built up a good will throughout the territory last above described and all thereof. That, in the sale and distribution of coffee, it has become necessary, and is necessary, in order to retain the trade and good will of the customers of the plaintiff, that coffee shall be freshly roasted and promptly delivered after roasting, in order that the quality, taste and aroma of the coffee be kept at the high standard which has been established and maintained by plaintiff for its said coffee, during the twenty years it has been in business and supplying the trade with such standard high-[fol. 10] grade coffee. Plaintiff alleges that, unless it is able to supply to its customers throughout the territory hereinabove described, fresh coffee, that is, coffee which has been roasted and packaged immediately prior to its delivery, it will lose the good will which it has built up with its customers throughout the territory aforesaid, and the business of plaintiff will be taken by one or many of its competitors, and the plaintiff's business will be entirely lost or irreparably damaged, to the great damage of the plaintiff. That money damages alone will only compensate in part for such loss. That the plaintiff will not have and does not have, a plain, adequate and speedy remedy at law.

II

That, at all times herein mentioned, the defendants Wholesale Delivery Drivers and Salesmen's Union, Local No. 595; Grocery Warehousemen's Local No. 595; Wholesale Delivery Drivers and Salesmen's Union, Local No. 848; Local 431, International Brotherhood of Teamsters,

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Chauffeurs, Warehousemen and Helpers of America; General Teamsters Union, Local No. 431; Central Labor Council of Santa Barbara, California; Culinary Alliance and Bartenders Local No. 498; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Joint Council of Teamsters No. 42; Doe One Association to Doe Twenty Association, were and are unincorporated associations and labor unions, all associated with one another and with the American Federation of Labor and, at all times herein mentioned, have acted together and in concert with one another.

[fol. 11] III

That at all times herein mentioned the defendants Grocery Warehousemen's Local No. 595 (AFL); Wholesale Delivery Drivers and Salesmen's Union, Local No. 848 (AFL); Local No. 388, International Printers, Pressmen and Assistants Union (AFL); Food and Drug Council of Los Angeles (AFL), and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), all maintain offices in the City of Los Angeles, County of Los Angeles, State of California; that the defendants Thomas L. Pitts, Gay Lillefloren, Walter Turner, A. V. Anderson, and numerous *other* of the defendants hereinabove named, resided in the County of Los Angeles, State of California, at all times in this complaint mentioned.

IV

That the defendants John Doe One to John Doe Twenty, inclusive, and each of them, now are and at all times herein mentioned have been members and representatives of the defendant unions and parties to, and actually participated in, the unlawful agreement and combination hereinafter mentioned. That the defendants Doe One Association to Doe Twenty Association, inclusive, are and each of them is, and at all times herein mentioned have been, an unincorporated association and labor union, consisting of more than two persons and a party to and actually participated in the unlawful agreement and combination hereinafter mentioned. That Black & White Corporations 1 to 5, inclusive, are and were at all times herein mentioned doing business within the State of California, and at all times in this com-

plaint set forth have been parties to and actually partici-
[fol. 12] pating in the unlawful agreement hereinafter mentioned. That the defendants Richard Roe 1 to Richard Roe 10, inclusive, are fictitious names and the plaintiff is not *is not* informed as to whether they are individuals, copartnerships, or corporations, and when plaintiff has ascertained their true names and character, plaintiff will ask permission to amend this complaint and these proceedings to substitute their true names and character.

V

That the defendants *Jone* One to John Doe Twenty, inclusive, and Mary Roe One to Mary Roe Twenty, inclusive; Doe One Association to Doe Twenty Association, inclusive; Black & White Corporations, 1 to 5, inclusive; Richard Roe 1 to Richard Roe 10, inclusive, are fictitious names; and said persons, unions, associations or corporations are designated herein by said fictitious names because their true names are to the plaintiff unknown; and plaintiff will ask leave to amend this complaint and proceedings herein to substitute their true names as soon as their true names are discovered.

VI

That at all times herein mentioned the defendants Southern Pacific Company, a corporation; California Motor Express, Ltd., a corporation; Los Angeles Albuquerque Express, a corporation; Railway Express Agency, a corporation; Western Truck Lines, Ltd., a corporation; Crow Transportation Company, a corporation; United Parcel Service, a corporation; Teskey Transportation Company, a corporation, were corporations doing business in the State of California, all engaged as common carriers operating pursuant to law and the rules and regulations affecting such companies, concerns, corporations and common carriers, [fol. 13] duly licensed as such according to law; and that each of said common carriers just hereinabove named has regularly, over a substantial period of time, and prior to April 29, 1946, received freight from and delivered freight to the plaintiff in the regular course of business; and that said transactions have been substantial and the value of the cargoes and freight shipped from and delivered to the plaintiff by said common carriers in the past year has ex-

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ceeded $100,000.00; that, as hereinbefore alleged, each of the said defendants in this paragraph named is a common carrier, subject to the rules and regulations particularly of the Interstate Commerce Commission, the Railroad Commission of the State of California, and all of the laws, statutes, rules and regulations thereunto relating, and they, and each of them, are charged by law with the duty as common carriers to handle all goods tendered to them for carriage, properly marked and printed, and it is their duty, according to their respective powers, to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, terminals, and for the receiving, forwarding, and delivery of freight left with them for shipment over their several routes or lines.

VII

That at all times herein mentioned the defendant Thomas L. Pitts was a member of, agent of, representative of, and secretary-treasurer of the defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL).

[fol. 14] VIII

That at all times herein mentioned the defendant Gay Lillefloren was a member of, agent of, and representative of the defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and helpers of America (AFL).

IX

That at all times herein mentioned the defendant Ralph Woolpert was a member of, agent of, and representative of the defendant Grocery Warehousemen's Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL).

X

That at all times herein mentioned the defendant George Rollis was a member of, agent of, and representative of the

defendant Local No. 62 of Culinary Alliance and Bartenders Union (AFL).

XI

That at all times herein mentioned the defendant Bee Tumber was a member of, agent of and representative of the defendant Culinary Alliance and Bartenders Local No. 498, affiliated with the American Federation of Labor.

XII

That at all times herein mentioned the defendant Ted Willis was a member of, agent of, and representative of the defendant General Teamsters Union, Local No. 431, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL).

[fol. 15]

XIII

That at all times herein mentioned the defendant Russell Marks was a member of, agent of, and representative of the defendant Doe One Association, a labor union, and said defendant was at all times herein mentioned acting as an agent of the defendant unions hereinbefore named, and each of them.

XIV

That at all times herein mentioned the defendant Irvin Gustafson was a member of, agent of, representative of, and divisional representative of the defendant Grocery Warehousemen's Local No. 595, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL).

XV

That at all times herein mentioned each of the defendants John Doe Annand, Homer Ford, Syl Sylvane, John Doe Bowers and Irv Magisen was a member of, agent of, and representative of Doe One Association and, at all times herein mentioned, was an agent of the defendant unions hereinabove named and acting for and in their behalf.

XVI

That at all times herein mentioned the defendant Walter Turner was a member of, agent of, and representative of

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Local No. 388, International Printers, Pressmen and Assistants, a labor union affiliated with the American Federation of Labor.

[fol. 16] XVII

That, in the conduct of its said business, the plaintiff has become and is an employer and employs approximately three hundred (300) persons; that there is not now, nor at any time mentioned in this complaint has there existed, any labor controversy or any dispute concerning wages, working hours, working conditions, seniority, or any labor grievance or grievances, as between the plaintiff and its employees. That plaintiff pays its employees a scale of wages which is satisfactory to them and at least equal to, if not better than, the scale required by the defendant unions and each of them.

XVIII

That now, and at all times herein mentioned, there existed and exists no strike and no lockout and no boycott, either individually or in groups. That now, and at all times herein mentioned, the plaintiff has not discriminated against any of its employees who belong to or maintain membership in the defendant unions, or any union, nor has it discriminated against employees who do not belong to or maintain membership in any union. That at all times herein mentioned, the employees of plaintiff have not made any demands upon the plaintiff to raise or to alter working conditions, and no grievance of any kind exists or existed as between the plaintiff and its employees.

XIX

That on or about April 29, 1946, the defendants Ralph Woolpert, John Doe Annand, acting as agents of and for the defendant unions and each of them, came to the office of the plaintiff and stated to plaintiff and demanded of plaintiff that it, the plaintiff, should forthwith dismiss all of its employees and send them to their respective homes; [fol. 17] that the plaintiff should then notify its said employees that it, the plaintiff, would employ only such of its employees as would join and become members of the defendant unions and particularly the Wholesale Delivery Drivers and Salesmen's Local No. 848, affiliated with the

International Brotherhood of Teamsters, Shauffeurs, Warehousemen and Helpers of America (AFL) and/or the Grocery Warehousemen's Local No. 595, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), and maintain memberships therein. That the said defendants Ralph Woolpert, John Doe Annand, stated that, unless the plaintiff, Farmer Bros. Co., signed a closed-shop contract with the said defendant unions, namely, the Grocery Warehousemen, Local No. 595, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL) and/or the Wholesale Delivery Drivers and Salesmen's Local No. 848, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL); that is to say, a contract to be signed by the plaintiff and by the said defendant unions just hereinbefore mentioned in this paragraph, wherein and whereby: first, all employees of the plaintiff would be required to join and become members of said defendant unions and maintain membership therein as a condition precedent to being employed by plaintiff and/or to continue to be employed by plaintiff and second, that plaintiff, by the said contract, consent and agree that the said defendant unions, Grocery Warehousemen's Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL) and/or Wholesale Delivery Drivers and Salesmen's [fol. 18] Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL) be constituted and named as the sole bargaining agent for all of the employees of the plaintiff's said plant, for both presently employed employees and all persons who might thereafter be employed by plaintiff. That the said defendants Ralph Woolpert and John Doe Annand, acting for and on behalf of said defendant unions and as their business agents and representatives, then stated to plaintiff that, unless such a closed-shop contract, as hereinabove described, was then and there signed by the plaintiff, the said unions and the said defendant unions herein named, and each of them, would start picketing the places of business of the plaintiff and stated, further, that they would throw a picket line around the plants, offices and warehouses of the plaintiff, such a picket

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line as would prevent the plaintiff from obtaining delivery of merchandise and materials and that they, the defendants, and each of them, would prevent the plaintiff from itself delivering to, or causing to be delivered its products and merchandise to, its customers. That they, the defendants, would prevent the plaintiff from either shipping merchandise or receiving merchandise, either by common carrier, truck, railroad or in any manner whatsoever; plaintiff alleges the fact to be that, at the time the defendants made the aforementioned demands upon the plaintiff, that neither, nor any of the defendant unions represented a majority of or any of plaintiff's employees for collective bargaining purposes; that all of the defendant unions collectively did not represent a majority of the persons employed by the plaintiff at the time of the making of said demands, or at any time, for collective bargaining purposes. [fol. 19] That plaintiff refused to accede to said demands of said defendants. That at said time and place the defendant John Doe Annand stated, in substance or effect, to plaintiff:

"You had better sign this contract because we could picket this place for ten years and we don't think we could get a majority of your employees to join our unions."

## XX

That, at the time of the demands as aforesaid on the part of the said defendants, that plaintiff require union membership and maintenance of union membership as a condition of employment, there existed on the payroll of plaintiff, and there were actually in the employ of plaintiff, sixty-four (64) honorably discharged veterans of World War II, to wit, sixty-four (64) former members of the Armed Services of the United States of America, who on said day and now have been discharged from said Armed Services less than one year immediately last past and who, under the then and now existing law, to wit, the Selective Service Act of the United States of America, and the Sailors and Soldiers Relief Act of the United States of America, as amended, were not required to become members in a labor union, either as a condition precedent to obtaining employment, nor as a condition to maintaining employment during said year. That, at the times herein mentioned, each of said

veterans had obtained employment with the plaintiff at a time when there existed no labor contracts or closed-shop agreements affecting the plaintiff or any of said veterans. That no such closed-shop contract has ever existed, nor does it now exist, with respect to the plaintiff or its employees or any of them, including the said sixty-four (64) veterans. That, for said reason alone, the plaintiff was and [fol. 20] is unable to comply with the demands of the said defendant unions respecting the dismissal of its employees, to wit, said sixty-four (64) veterans, and the setting up and maintenance of a closed-shop contract requiring union membership by said sixty-four (64) veterans, all of whom are now engaged in the work and business of plaintiff as employees thereof.

XXI

That each and every one of the demands made by the defendants upon the plaintiff, the plaintiff then and there being in interstate commerce and the defendant unions failing to represent a majority of the workers employed by the plaintiff for collective bargaining purposes, were unlawful.

XXII

That on April 29, 1946, the defendant unions, their business representatives and agents herein named, placed a picket line about the plaintiff's plant in Los Angeles, California. That none of said pickets were employees or former employees of the plaintiff but consisted, in part, of the following named business agents, representatives and officers of the defendant unions, to wit: Thomas Pitts, Gay Lillefloren, John Doe Annand, Irv Magisen, Ralph Woolpert, Homer Ford, Irving Gustafson, Syl Sylvane, Russell Marks and John Doe Bowers.

That there are attached hereto photographs marked "Exhibits A and B" which are hereby referred to and by such reference made a part hereof, as fully as if set out herein, which photographs show in part only some of the defendants hereinabove named actually engaged in the picket line in front of the plant of plaintiff.

[fol. 21] That at the time of the placing of said picket line around plaintiff's plant the plaintiff employed approximately ten (10) truck drivers, and the defendant business

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agents and representatives of said defendant unions stated to said truck drivers, in substance or effect:

"Unless you drivers join the Teamsters Union" and refuse to work for Farmer Bros. Co. and refuse to cross that picket line, you will never be able to join the Teamsters Union and we will forever blackball you from obtaining work as a truck driver, or otherwise. We will follow you wherever you go and see that you don't get a job."

That the said defendant members, agents and representatives of the defendant unions, including the defendants Thomas L. Pitts, Gay Lillefloren, Russell Marks, John Doe Annand, Irv Magisen, Irvin Gustafson, stated to the said employees of plaintiff that they would keep them from making any deliveries or performing any work for the plaintiff; and thereafter the said defendants just hereinabove named assigned automobiles to follow each of the delivery trucks of the plaintiff and, as delivery trucks of the plaintiff left its plant, they were followed in each instance by a carload of pickets including one or more of the defendants in this paragraph hereinbefore named; and a car containing said defendant would follow the trucks of plaintiff until they left the plant of plaintiff and would continue to follow them until such automobiles and trucks reached their destination; and when said trucks or cars attempted to unload their merchandise or products of the plaintiff at the place of business of a customer of plaintiff, or if a truck of the plaintiff attempted to pick up merchandise at the office of a supplier or carrier or trans-
[fol. 22] portation company of the plaintiff, said pickets, and one or more of the defendants hereinabove just named, would immediately tell the representative of said customer, supplier or carrier of the plaintiff, that, if such customer, supplier or carrier did business with plaintiff, they, the said defendants, would place a picket line about the place of business of said customer, supplier or carrier of the plaintiff and would cause them a lot of trouble, and would cause the employees of said customer, supplier or carrier of plaintiff, to cease performing any services for such customer, supplier or carrier of plaintiff.

XXIII

That the plaintiff has enjoyed, for a substantial period of time and for more than a year, business relations with innumerable cafes, restaurants and business houses, who have been buying coffee, spices, crockery, and other supplies commonly sold to its customers, from the plaintiff. That some of those customers are: Brittingham's Commissary Company, a concern which operates a large commissary business, supplying thousands of meals to workers employed by moving picture studios, shipyards, manufacturing plants and restaurants; that the extent of said concern's business would be hard to estimate, but for a substantial period of time, and for more than a year last past, plaintiff has been supplying to said customer, Brittingham's Commissary Company, approximately 12,000 pounds of coffee per month. That the number of customers affected by the acts of said defendant unions is too large to enumerate, but includes customers from Los Angeles to Fresno, California, such as: New Victory Cafe, 1050 Broadway, Fresno, California; The Turret Cafe, 5928 South Central Avenue, Los Angeles, California.
[fol. 23] That the representatives of the defendants, and since picketing commenced as heretofore set forth, have called upon Brittingham's Commissary Company and, in substance or effect, have stated to said customer of plaintiff:

"You can't buy or use coffee furnished you by Farmer Bros. Co. You will have to take out of your plant any supplies or equipment, such as urns, or other devices for the brewing of coffee, furnished by Farmer Bros. Co., and if you do not do so, we will picket your place of business, we will picket the people with whom you do business; and we will cause you a lot of trouble. We will cause the workers employed in your plants and driving your trucks to cease performing any services for you. We will so tie you up that you will be unable to receive deliveries or ship anything to anybody."

That the defendants George Rollis and Ted Willis called at the New Victory Cafe in Fresno, California, on May 16, 1946, and told the proprietor of that establishment, who had been a steady and valued customer of plaintiff, in substance or effect:

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"We see you are handling Farmer Bros. coffee. You have a sign up there. The first thing you will have to do is take down that sign reading 'Farmer Bros. Coffee Served Here.' We understand you are using their urns for making coffee. You will have to throw the urns out and what Farmer Bros. coffee you now have on hand, you will have to send back or get rid of. If you don't, we will picket your place of business. We will cause all of your employees to cease performing work. You won't be able to get a delivery. We'll tie you up. You'd better think it over, or we'll put you out of business."

[fol. 24] That on or about May 16, 1946, representatives of the defendant unions called at the Turret Cafe, 5928 South Central Avenue, Los Angeles, California, a valued and substantial customer of plaintiff and a user of Farmer Bros. coffee, and stated to said Turret Cafe, in substance or effect:

"You are using Farmer Bros. coffee and equipment. You will have to stop at once, or else we will throw a picket line around your place and we will see to it that we'll close you up. We will get your employees to stop performing any work for you. Take it or leave it."

Thereupon, said representatives of said defendant unions went across the street to a large distributing plant, namely, Simon-Levi Company, which concern *employees* hundreds of persons, a great number of whom had theretofore eaten regularly at the Turret Cafe, and said defendants caused to be posted and maintained beside the time clock in the plant of the Simon-Levi Company a sign which said, in effect:

"Do not patronize the Turret Cafe as long as they use Farmer Bros. coffee."

## XXIV

That for some time prior to May 2, 1946, the plaintiff had employed the C. C. Rubbish Company, owned and operated by a Mr. Colby who, plaintiff is informed and believes and alleges, is a common carrier, for the purpose of picking up and transporting from plaintiff's place of business at 3828 South Main Street, Los Angeles, paper, rags, burlaps, and other waste material, all of which con-

stituted a fire hazard if allowed to accumulate at the plant of plaintiff, against the rules and regulations of the Fire Department of the City of Los Angeles. That on May 2, [fol. 25] 1946, plaintiff employed the said C. C. Rubbish Company to pick up and haul from the plant of the plaintiff the said rubbish. Thereupon the said C. C. Rubbish Company reported to the plant of plaintiff for the purpose of picking up said rubbish and were immediately informed by the defendant unions that the said material was "hot" and if they picked it up and removed it from the plant of plaintiff, then they, the said defendants, would picket the plant and place of the said C. C. Rubbish Company and would cause his employees to cease performing services for him.

XXV

That as a result of the threats made by the defendant unions upon Brittingham's Commissary Company, the New Victory Cafe, the Turret Cafe, as hereinabove just more fully described, the said Brittingham's Commissary Company, the New Victory Cafe and the Turret Cafe have informed plaintiff that they would like to continue doing business with plaintiff, that they desire to use the products of plaintiff; but that they are afraid of the labor unions and their threats and fear that all of their employees would be called out and picket lines placed around their establishments, and their employees have threatened to cease performing services for their respective employers if their respective employers continue to purchase coffee or any merchandise whatever from Farmer Bros. Co., the plaintiff herein.

That the said C. C. Rubbish Company stated to plaintiff that they would like to continue doing business with the plaintiff and pick up and haul away its rubbish, but that [fol. 26] they have been told by the defendant labor unions that, if they did so, they would have labor trouble and they have been told by their employees that, if they did business with plaintiff, said employees would cease to perform services for said Rubbish Company.

XXVI

That it is necessary for the plaintiff, in the conduct of its business, through the offices of brokers, and plaintiff

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does, to import coffee from various Central and South American countries. That, at the present time, plaintiff has several carloads of green coffee at San Pedro, California, which coffee it has purchased and is in need of at its plant for the purpose of carrying on its business. That the defendant unions and their representatives have informed the broker from whom plaintiff purchased said coffee that if said coffee, in said cars, was permitted to reach Farmer Bros. Co. they, the said defendant unions and their said representatives, would tie up all of the coffee in the possession of said brokers; that they would tie up all of the coffee on ships in the harbor, or about to reach the harbor, and said to said brokers that they would tie up all of the shipping in the harbor and would prevent the unloading of any ships, and would prevent the loading of coffee on to railroad freight cars or trucks, and would prevent the transportation or delivery of said coffee to consumers or customers of said brokers, including Farmer Bros. Co., the plaintiff, either by railroad, truck, or any other means of transportation; that, as a result thereof, several cars of coffee valued in excess of $50,000.00 are now lying in freight cars in San Pedro Harbor, California, and in imminent danger of being spoiled.

[fol. 27] XXVII

Plaintiff alleges that, in order for plaintiff to carry on its business, said plaintiff must of necessity purchase numerous commodities, such as green coffee, spices, containers for the purpose of packaging coffee and spices, distilled water for use in connection with the manufacture of extracts and the general conduct of its manufacturing business, oil, fuel, and other commodities, and said articles must, of necessity, be promptly and regularly delivered to plaintiff's plant where it uses said commodities in its processing, assembling, manufacturing and packaging activities. The purchase, resale, assembling, manufacture and packaging of said products is an essential part of plaintiff's business; and the majority of its employees are engaged in such activities.

That the persons, concerns and corporations from whom the plaintiff has purchased commodities for use in its manufacturing activities are herein referred to and called "suppliers," and, without the prompt delivery of supplies from

said concerns, the plaintiff is unable to carry on its manufacture and distribution activities. That among the concerns from whom plaintiff purchases necessary commodities are: Signal Oil Company, Arrowhead Springs & Puritas Water Company, Inc., California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, and many other suppliers too numerous to mention.

XXVIII

That on or about April 29, 1946, the defendant unions, and each of them, have declared, and ever since have declared, the plaintiff to be unfair to the Teamsters Union and, as hereinbefore set forth, established a picket line in [fol. 28] and about the entrances to plaintiff's plants, and ever since have maintained and do now maintain said picket line. Said pickets walk up and down in front of the entrance, attempt to stop persons going to and from plaintiff's place of business, follow the cars of customers from the plant of the plaintiff, and thereafter threaten said customers in this, that said customers are told, in substance or effect, that "if they continue to purchase goods, wares and merchandise from the plaintiff, they, said customers, will have trouble, that picket lines will be put about their places of business, and strikes will be called"; that, as trucks come to the plaintiff's place of business, the defendant unions, their representatives and members, and the pickets, approach said trucks and threaten said truck drivers that if they, said truck drivers, leave material, merchandise or wares at plaintiff's plant, or pick up merchandise at the plaintiff's plant, that they, said truck drivers and their employers, will have serious labor trouble; that the plants of said employers will be picketed; that the union cards of said truck drivers, if any, will be picked up and their membership terminated.

XXIX

Plaintiff alleges that, in connection with its operating activities, it must of necessity buy oxygen, which is necessary in carrying on certain welding operations in the manufacture of coffee urns that are made by plaintiff and leased to customers of plaintiff for the purpose of brewing Farmer Bros. coffee therein. That, without said oxygen, said opera-

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tions cannot be carried on at all. That, for a substantial period of time, plaintiff has had a contract with The Linde Air Products Company, as a result of which contract the said Linde Air Products Company is required to deliver to [fol. 29] plaintiff oxygen for its said manufacturing operations.

That on or about May 15, 1946, an employe of the plaintiff, to wit, one Louis M. Clemens, took a truck *hom* with him for the purpose of picking up a load of oxygen containers at the Linde Air Products Company plant the next morning; that, as the said Louis M. Clemens left the plant of plaintiff, the said defendant Irv Magisen followed plaintiff's said *emplpyee* and the next morning the said defendant Irv Magizen followed the plaintiff's said employee to the plant of the Linde Air Products Company and, as said Louis M. Clemens, plaintiff's employee, attempted to pick up a load of oxygen tanks, the said defendant Irv Magisen approached the loading dock and said to the representative of the Linde Air Products Company:

"I am from the Teamsters Union. Don't let this fellow pick up that oxygen. There's a strike down at Farmer Bros."

Thereupon, the said Louis M. Clemens, plaintiff's employee, said:

"There is no strike at our plant. Nobody is out on strike. You fellows are just trying to force us to join your union."

Thereupon, the said defendant Irv Magisen said to the representative of the Linde Air Products Company:

"I don't want you to deliver any oxygen to Farmer Bros. This stuff is hot cargo. You wouldn't like to have a picket line thrown around your place, would you, Mister? You wouldn't like to have your employees called out on strike? You wouldn't like to have your workers quit working for [fol. 30] you? Well then, you'd better cooperate or, the next thing you know, we'll pull all the drivers off the truck of the Crow Transportation Company that does your hauling. You better not let Farmer Bros. Co. have any oxygen. If you don't want to have a lot of trouble you'd better not let them have this hot stuff. We'll pull a strike here."

Thereafter plaintiff was unable to obtain any oxygen from said supplier.

## XXX

That, in connection with the operation of plaintiff's business, plaintiff must of necessity purchase large quantities of containers for the purpose of putting up its products therein for distribution to its customers and, for a substantial period of time prior to the commencement of this action and prior to the activities of said defendant unions, as herein described, plaintiff has been regularly purchasing said containers from the California Container Company in Los Angeles; that on or about May 15, 1946, a representative of plaintiff went to the plant of the California Container Company for the purpose of picking up a large quantity of containers, all of which said containers had been especially prepared for plaintiff and contained thereon the printed name of "Farmer Bros. Co."; that said containers are of a particular kind, color and character and are prepared especially for use as coffee containers and preservers, and are so prepared in order to accentuate certain colors which have been indicative, over a period of years, of plaintiff's packaged coffee, and said container is well known to the customers of plaintiff.

That, as plaintiff's representative attempted to pick up said containers for transportation to the plant of plaintiff, [fol. 31] the defendant Walter Turner, secretary of the defendant union, Local No. 388, International Printers, Pressmen and Assistants, stated to the superintendent of California Container Company, in substance:

"You'd better not deliver any containers to Farmer Bros. Co., or all of the employees in this plant will go on strike. We'll quit work; and if you so much as print another bag for Farmer Brothers, we'll call a strike here. We have been told by the Teamsters Union about the difficulty with Farmer Bros. Co."

## XXXI

That each of the defendants herein named as common carriers, namely: Southern Pacific Company, California Motor Express, Ltd., Los Angeles and Albuquerque Express, a corporation; Railway Express Agency, a corporation; Western Truck Lines, Ltd., a corporation, and Crow Transportation Company, a corporation, are common carriers, as plaintiff has hereinbefore alleged; and, prior to April 24, 1946, said above named common carriers delivered

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shipments of freight to plaintiff and regularly accepted shipments of freight from plaintiff for shipment to various plants, customers and suppliers of plaintiff. That plaintiff could not carry on its business without the use of said common carriers.

(a) That on or about May 2, 1946, in the ordinary course of its business, plaintiff attempted to ship merchandise consisting of coffee and spices to some of its customers outside of the City of Los Angeles and, for the purpose of making such shipment, attempted to deliver to the defendants California Motor Express, Ltd., and Western Truck Lines, Ltd., freight at Los Angeles, California, for shipment as aforesaid. That the defendants stated to the said common car- [fol. 32] riers, and each of them as hereinbefore named, that the products of plaintiff were "hot cargo" and demanded that said common carriers refuse to load, convey or unload, and refuse to transport the said merchandise sought to be shipped by plaintiff, or any of the products of plaintiff; that said defendants threatened that if the drivers of trucks of the said common carriers hauled freight for the plaintiff, said truck drivers who were themselves members of one or more of the defendant unions and not employees of plaintiff, would be fined $500.00 each and would be expelled from their respective unions; that then and their said truck drivers of said above named common carriers refused, and have since refused, to accept any merchandise for loading, transportation or for unloading; and said common carriers now refuse to accept for shipment over their truck lines, or otherwise, any of the products or merchandise of plaintiff.

(b) That on May 1, 1946, plaintiff arranged with California Transportation Company, at Los Angeles, California, for the pickup by said transportation company at Los Angeles at the plant of plaintiff, of a shipment of coffee to be transported to Salt Lake City, Utah. That said California Transportation Company assigned one of its trucks, driven by one of its employees, a Mr. Spots, which truck arrived at the place of business of plaintiff on May 1, 1946, for the express purpose of picking up said merchandise and transporting same; that said truck, when it arrived near the place of business of plaintiff, was met by the defendant Gay Lillefloren, who stated to the driver

thereof that the plaintiff's place of business was on strike, was under picket line, and threatened said Spots with trouble if he took delivery of any merchandise from the [fol. 33] plaintiff's place of business. That the said California Transportation Company and said Spots thereupon refused to take delivery of said merchandise or to transport the same.

(c) That on May 1, 1946, plaintiff arranged with Texas Arizona Freight Lines, a common carrier, to pick up a shipment of plaintiff's merchandise at its place of business, 3828 South Main Street, Los Angeles, for transportation to El Paso, Texas; that the defendants stated to said Texas Arizona Freight Lines that said plaintiff's place of business was on strike and threatened to make trouble for said Texas Arizona Freight Lines in the event it transported any of plaintiff's merchandise; that said Texas Arizona Freight Lines, as a result of said threats, refused to take delivery of or transport any of the merchandise of the plaintiff.

(d) That on May 1, 1946, plaintiff attempted to make arrangements with the Los Angeles-Yuma-Phoenix Transportation Company for the delivery to it of merchandise of plaintiff for transportation to Yuma, Arizona. That the defendants, by threats of making trouble for the truck drivers of said carrier, succeeded in prevailing upon said Los Angeles-Yuma-Phoenix Transportation Company to refuse to pick up, accept for transportation, or transport the products of plaintiff, which condition still exists.

(e) That on May 7, 1946, plaintiff delivered to the defendant Western Truck Lines, Ltd., freight consisting of products of plaintiff for shipment to points outside the County of Los Angeles. That said freight was attempted to be delivered by plaintiff to the dock of Western Freight Lines, Ltd., at Los Angeles, California. That at said place, and [fol. 34] prior to refusing the delivery of said freight and the refusal of Western Truck Lines, Ltd., to transport the same, the defendant unions, through their business representatives, demanded of and from Western Freight Lines, Ltd., that they not accept, that they not transport, or handle, any products of plaintiff. That the said shipment was refused by Western Freight Lines, Ltd., and said condition

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and refusales have continued from May 7, 1946, continuously to date.

(f) That on May 7, 1946, plaintiff attempted to deliver to the defendant California Motor Express, Ltd., a load of merchandise for delivery outside of the State of California. That said freight of plaintiff was actually brought by plaintiff to the loading dock of said common carrier. That thereupon the defendants directed and sent Mr. Russell Marks to the place of business of said common carrier and to its dock where said freight was, and said Russell Marks, on behalf of the defendants, stated that said freight was "hot cargo" and stated that he prohibited the said common carrier from handling the same. Thereupon said carrier refused to accept or transport said products of plaintiff, rejected the same, and said rejection has continued until the present day.

(g) That on May 7, 1946, plaintiff delivered to the Los Angeles Albuquerque Express, Ltd., a load of freight consisting of products of the plaintiff for delivery outside of the State of California; that said freight was accepted by a Mr. James, the general manager, and Mr. Thompson, the dock foreman of said carrier. That thereupon Mr. Russell Marks, acting on behalf of the defendants, appeared and stated that the freight was "hot cargo," that Farmer Bros. Co. was on strike, that its employees were out on strike, and [fol. 35] that the said unions were demanding that said common carrier refuse to accept said freight.

(h) That on May 2, 1946, the defendant California Motor Express, at 1005 Hooper Avenue, Los Angeles, California, had in its possession a shipment of cartons belonging to the plaintiff which was in course of transportation to the place of business of plaintiff at Los Angeles, California. That the plaintiff requested delivery of said cartons. That the defendants then stated, in substance or effect, to the California Motor Express and its truck drivers that the defendant unions would not permit the delivery of said cartons or any merchandise of the plaintiff's whatever.

(i) That on May 7, 1946, plaintiff had purchased from Empire Chemical Company of Los Angeles, California, a quantity of sweeping compound; that said Empire Chemical Company on May 7, 1946, attempted to deliver the

same to the place of business of plaintiff at Los Angeles. That the pickets of defendants then at said time, in front of the place of business of plaintiff at 3838 South Main Street, Los Angeles, California, then and there, by threats of violence and by threats of penalties, union and otherwise, made to the driver of said truck of Empire Chemical Company attempting said delivery, prevented the delivery of said compound to plaintiff.

(j) That on May 7, 1946, the defendant United Parcel Service had in its possession merchandise and parcels for delivery to plaintiff; that said merchandise was in the course of transportation to plaintiff from suppliers of the plaintiff; that the said defendants, by falsely stating to the United Parcel Service that there was a strike on at the said place of business of plaintiff, prevented United Parcel Service from delivering said material to plaintiff.

[fol. 36] (k) That on May 7, 1946, at Los Angeles, California, the defendant California Motor Express, Ltd., refused to pick up or transport anything for or on behalf of plaintiff. Said refusal was the direct result of the acts of said defendant unions, due to false statements of their representatives to the effect that a strike existed at the plant of plaintiff, and that the merchandise of the plaintiff was "hot cargo."

(l) That on May 7, 1946, the defendant Railway Express Agency had in its possession merchandise and supplies belonging to plaintiff in the course of transit and for ultimate delivery to the plaintiff's place of business at Los Angeles. That the said defendants falsely stated to said common carrier that a strike existed at the place of business of plaintiff, Farmer Bros. Co., and forbade the drivers of the trucks of said carrier to make said deliveries, and said deliveries were not made by reason thereof.

(m) That on April 30, 1946, the defendant Teskey Transportation Company had in its possession a load of cartons which had been manufactured by the California Container Company for the express use of the plaintiff; that the defendant unions informed said carrier falsely that a strike existed at the plant of plaintiff and that said material was "hot cargo," and said carrier then refused to and did not deliver said cartons to plaintiff.

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(n) That on or about May 16, 1946, the plaintiff delivered to the defendant Southern Pacific Company at its freight dock at 5001 South Alameda Street, Los Angeles, California, five (5) cases of coffee for shipment from Farmer Bros. Co., Los Angeles, California, consigned to Farmer Bros. Co., care of Pearl Upson & Son, Reno, Nevada; that said South-
[fol. 37] ern Pacific Company acknowledged receipt of a uniform straight bill of lading for said merchandise and issued same, a copy of which is attached hereto and marked "Exhibit C" and by reference made a part hereof as fully as if set out herein in detail; that after said coffee had been delivered at the dock of Southern Pacific Company and after said Southern Pacific Company had issued said uniform straight bill of lading (Exhibit "C"), the defendant Irv Magisen, who had followed the truck of plaintiff from its plant to the freight dock of Southern Pacific Company, stated to a dock checker employed by the defendant Southern Pacific Company, one Gonzales, at 5001 South Alameda Street, Los Angeles, California, in substance or effect:

"That coffee is from Farmer Brothers. It's hot. You'd better call your Local for verification. You can't handle this stuff."

Thereupon the said Gonzales had a conversation with a man by the name of Cissna who, plaintiff is informed and believes and therefore alleges was in charge of the loading dock of said defendant Southern Pacific Company, and immediately after said conversation the said Cissna had a conversation with one E. J. Kerver, Secretary of Local No. 30, and said E. J. Kerver told the said Cissna:

"Farmer Bros. Co. is hot cargo. You can't handle it. Don't touch their freight."

Thereupon said Cissna called the defendant A. V. Anderson, General Freight Agent of said defendant Southern Pacific Company, and thereupon said A. V. Anderson had a conversation with the defendant Irv Magisen, in which conversation the said defendant Magisen told the said
[fol. 38] defendant A. V. Anderson that if the Southern Pacific Company handled the freight of Farmer Bros. Co., which was hot cargo, the defendant unions would call out all of the employees of Southern Pacific Company, would call a strike, would put pickets on the dock and tie them up.

And thereupon the said defendant A. V. Anderson, General Freight Agent of the defendant Southern Pacific Company and acting as the Southern Pacific Company, stated to the said Cissna, an agent of the Southern Pacific Company:

"Don't handle the freight of Farmer Bros. Co. and order them to take the freight off the Southern Pacific dock.-

Thereupon the said Cissna stated that the Southern Pacific Company would not handle the freight of plaintiff; that it would not ship this freight to Reno, and the said defendant Southern Pacific Company still fails, refuses and neglects to perform its duty as a public common carrier engaged in interstate commerce, and still fails, refuses and neglects to transport said merchandise from Farmer Bros. Co., Los Angeles, California, to Farmer Bros. Co., Reno, Nevada.

XXXII

That on or about May 9, 1946, the defendant Bee Tumber, as business representative of and secretary of the Culinary Alliance and Bartenders Local No. 498, caused the plaintiff, Farmer Bros. Co., to be placed upon the "unfair list" in Santa Barbara County, California, and thereafter immediately notified the customers of plaintiff Farmer Bros. Co. in Santa Barbara County that if they purchased coffee from Farmer Bros. Co. their places of business would be picketed, [fol. 39] a strike would be called, and their employees would refuse to perform services for such customers of Farmer Bros. Co.; thereafter, and on or about May 13, 1946, the defendant Central Labor Council of Santa Barbara County, California, placed the plaintiff, Farmer Bros. Co., upon the "unfair list" and the "Don't patronize" list and thereafter caused the customers of plaintiff to be notified that if they, said customers, purchased coffee from plaintiff, they, said customers, would have labor trouble and that their employees would refuse to perform any services for them and that strikes would be called.

XXXIII

Upon receipt of said notifications and threats from defendant unions and their representatives, and because of the fear of the disruption of their business unless they conformed thereto, the said suppliers, the said buyers and

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customers of the plaintiff and the said common carriers of the plaintiff heretofore named, and each of them, have since refused, and each does now refuse, and so long as said threats are continued, will refuse, to do business with the plaintiff or to supply to plaintiff all or any part of plaintiff's needs of the respective commodities which have heretofore been obtained by plaintiff from said respective suppliers, and said customers will refuse to buy or accept delivery from the plaintiff, and said common carriers will refuse to deliver freight to or from the plaintiff's places of business. On numerous occasions since the delivery to said suppliers, buyers and customers and common carriers of plaintiff of such notification and threats, the plaintiff has repeatedly telephoned the place of business of the suppliers, the buyers and customers and the common carriers of plaintiff to ascertain if plaintiff could obtain supplies [fol. 40] from suppliers, if plaintiff could sell and deliver to the buyers and customers of plaintiff various supplies, and if the common carriers would pick up and deliver from and to plaintiff's plant, and in each such instance supplies have been refused, plaintiff's customers and buyers have refused to buy from plaintiff, and said common carriers hereinbefore named have refused to pick up or deliver freight from and to plaintiff's plant in the City of Los Angeles, California, and have generally refused to do business with this plaintiff upon the ground that to do so would subject the said supplier, buyer and common carrier to certain refusal of their employees to continue performing services for them, or either of them. Plaintiff is informed and believes, and upon such information and belief alleges, that the suppliers of the plaintiff, the buyers and customers of the plaintiff, and the common carriers of the plaintiff, who have heretofore done business with the plaintiff, are ready, able and willing to deal with plaintiff, except for said unlawful agreement and combination and threats upon the part of the defendant unions, and if said unlawful conduct and threats on the part of the defendant unions, and each of them, is enjoined, said suppliers, buyers and customers and common carriers will deal with and do business with the plaintiff the same as they did before, and prior to said unlawful agreement and combination and the threats herein complained of.

## XXXIV

That during the month of April, 1946, at a time the exact date of which is not now known to the plaintiff, but prior to April 29, 1946, plaintiff alleges that the defendants and each of them made and entered into an agreement and combination, wherein and whereby said defendants, and each [fol. 41] of them, agreed that they would coerce, compel and cause the employees of the plaintiff's suppliers, plaintiff's customers and the common carriers who have heretofore delivered and received freight to and from the plaintiff, to cease to perform said services for said plaintiff and for their own employers, namely, the customers of the plaintiff and the suppliers of material of the plaintiff, and the common carriers who haul freight to and from the plaintiff's plant. Said agreement and combination was made for the purpose and with the intent of inducing and compelling said employers, namely, the customers of plaintiff, the suppliers of plaintiff and the common carriers of plaintiff to refrain from doing business with plaintiff, either as sellers, suppliers, purchasers, buyers, or as carriers, because of a dispute between the plaintiff and the defendant unions, to wit: the refusal of the plaintiff to accede to the demands of said unions and particularly the demands to recognize the Grocery Warehousemen's Local No. 595, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), and the Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL), as their exclusive bargaining agent by plaintiff's said employees and to sign a "closed-shop" agreement with the said last named local unions.

## XXXV

For the purpose and with the intent of effectuating and carrying out said unlawful combination and agreement, the said defendant unions and their agents, representatives and members, and each of them, during the months of April and May, 1946, the exact time of which is not now known to [fol. 42] plaintiff, agreed to and did notify Brittingham's Commissary Company and Turret Cafe of Los Angeles, California, and New Victory Cafe, Fresno, California, as customers and buyers of plaintiff, and the herein named

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common carriers who had theretofore been doing business with the plaintiff and delivering freight to and from the plaintiff in Los Angeles, California; namely, California Motor Express, Ltd., Crow Transportation Company, corporations, and numerous suppliers of plaintiff, such as Signal Oil Company, Arrowhead & Puritas Waters, Inc., corporations; California Container Company, a corporation; Linde Air Products Company, a corporation, and numerous other suppliers of plaintiff whose names are not at this time known to plaintiff, but when plaintiff has ascertained the same, plaintiff will ask leave of *course* to amend this complaint to include their names herein; and said defendant unions, and each of them, acting in concert and as a part of said unlawful agreement, did, during the months of April and May, 1946, notify all of the persons, concerns and corporations in this paragraph heretofore named, that effective immediately, if any or all of them continued to do business with the plaintiff, or supply any products to the plaintiff, directly or indirectly, or to purchase any products from the plaintiff, directly or indirectly, or to pick up, receive, haul, or in any manner, directly or indirectly, transport freight or merchandise to or from the plaintiff's plant, the defendant unions would cause the employees of each of said suppliers, customers, buyers and carriers of the plaintiff to cease performing any services for their employers, as long as they, the employers, attempted to do business with plaintiff, or supply plaintiff with any products, directly or indirectly, buy any products [fol. 43] from plaintiff, directly or indirectly, or haul, carry, deliver, or in any manner pick up freight from the plaintiff, or deliver freight to plaintiff.

## XXXVI

Plaintiff is informed and believes, and upon such information and belief alleges, that for the purpose of further carrying out said unlawful agreement and combination, defendants local unions and international unions, and their representatives, thereupon notified the employees of said suppliers of plaintiff, the customers and buyers of plaintiff, and the common carriers heretofore named, who have been hauling freight to and from and for the plaintiff, that they*m*, said employees, were then forbidden to handle any

products or perform any acts for their respective employers which would permit plaintiff to do business with, or obtain any supplies from, or ship any goods or merchandise to, their said respective employers; that plaintiff is informed and believes, and upon such information and belief alleges, that many of said suppliers, buyers and public carriers are parties to a closed-shop agreement with various and sundry labor unions affiliated with the defendant unions, and that the constitution, by-laws, rules and regulations of said local unions impose a fine and possible suspension or expulsion from membership upon any members who do any act contrary to such notification described hereinabove.

XXXVII

That each of the suppliers of the plaintiff, each of the customers and buyers of the plaintiff, and each of the public and common carriers in this complaint named, and who have been dealing and doing business with the plaintiff, is an employer in the State of California of a large number of employees, varying from few to hundreds.

[fol. 44]

XXXVIII

If the suppliers of plaintiff, the buyers and customers of plaintiff, and the common carriers of plaintiff, hereinbefore named, or any one of them, refuse to conform to and abide by the said notifications and threats made by said defendant unions and their representatives and agents, pursuant to said unlawful combination and agreement defendants and each of them threaten to carry out said threats and threaten to, and by the means described above will, cause the employees of each of said suppliers, buyers, customers and carriers so refusing, to cease performing any services for their respective employers, for the purpose and with the intent of inducing and compelling said respective employers, suppliers, buyers or carriers of plaintiff to refrain from doing business with, or supplying products to, or buying products from, or carrying products to or from the plaintiff.

XXXIX

The effect of said unlawful notifications, threats, agreement and combination of the defendants has been and is to deprive plaintiff of necessary supplies of products with

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which to carry on its business, to deprive plaintiff of its ability to deliver purchases to its customers and buyers and to use the facilities of the common carriers to obtain supplies, products and raw materials, and to ship finished products and supplies to its customers and buyers. Plaintiff, at all times since said refusal of said suppliers, buyers and carriers to do business with the plaintiff, has made and is now making diligent efforts to obtain supplies in adequate quantities elsewhere, and to ship goods to its customers by other means than by the common carriers named herein, but plaintiff has been and is unable to do so, [fol. 45] and will continue to be unable to do so as long as said unlawful threats, notifications, agreement and combination of the defendant unions continues.

XL

The nature and extent of plaintiff's business has been described herein in considerable detail and said business is the buying, selling, roasting, distributing, marketing and manufacture of coffee and spices and coffee brewing equipment, and said business is particularly essential to the public health and welfare, and is one which requires extreme reliability and continuity of service to plaintiff's customers in order to maintain the good will and continue the patronage of said customers. Said curtailment of plaintiff's sources of the products mentioned herein, and its inability to receive shipments by common carrier, all by reason of the unlawful acts of the defendants, herein set forth, has caused and is causing and, so long as said unlawful acts continue, will cause, irreparable damage to plaintiff, in that plaintiff's good will in the community and in the states within which the plaintiff is doing business and with its customers, has been, is being, and will continue to be, seriously impaired because of the inability of plaintiff to supply said customers with the products which have been customarily supplied by plaintiff to said customers, and for which supplies the customers look to plaintiff. The amount of the damage to plaintiff and plaintiff's business is impossible to determine, but might well exceed $500,000.00. Further damage to plaintiff's good will and business can be prevented only by enjoining the unlawful acts of the defendants in continuing to effectu-

ate said unlawful combination and agreement described herein.

[fol. 46] XLI

Plaintiff has no plain, speedy or adequate remedy at law, and unless the defendants are immediately restrained from continuing said unlawful acts, plaintiff will sustain great and irreparable injury and damage as hereinbefore alleged. Plaintiff is informed and believes, and on such information and belief alleges, that some of the defendants are incapable of responding in damages, and unless the relief herein prayed for is granted, plaintiff will be unable to be compensated for the injury sustained to its business.

As for a second and separate cause of action, plaintiff alleges:

I

Plaintiff here repleads and repeats each and every allegation heretofore set forth in its first cause of action and makes the same a part hereof, as if set forth herein in full.

II

That the said actions of the defendants, and each of them, and particularly said labor organizations and their agents, are in violation of Chapter 623, Statutes 1941, State of California, and the actions of the defendants commonly known as "secondary boycott and hot cargo," and of Sections 1131 to 1136, inclusive, Chapter Eight, Part Three, Division Two, of the Labor Code of the State of California; that, by law, the issue of a temporary restraining order and permanent injunction is specifically authorized and directed as more fully set forth in Chapter 623, Statutes 1941, State of California, and Section 1133, Labor Code.

[fol. 47] III

That as the direct and proximate result of the unlawful acts of the defendants, and each of them, as hereinbefore set forth, and of the combination and agreement and the acts and things done pursuant thereto, as hereinbefore alleged, the plaintiff has been damaged in the sum of two hundred fifty thousand dollars ($250,000.00).

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Wherefore, plaintiff prays judgment against the defendants, and each of them, as follows:

1. That a temporary restraining order and order to show cause be granted to the plaintiff herein as against the defendants, and each of them, to wit: Wholesale Delivery Drivers and Salesmen's Union, Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an international union affiliated with A. F. of L.; Grocery Warehousemen's Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Local 431, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; General Teamsters Union, Local No. 431, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and helpers of America, affiliated with A. F. of L.; Central Labor Council of Santa Barbara, California, affiliated with A. F. of L.; Culinary Alliance and Bartenders Local No. 498, affiliated with A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, [fol. 48] Warehousemen and Helpers of America, an international union affiliated with A. F. of L.; and an unincorporated association and labor union; Thomas L. Pitts, Secretary-Treasurer of Local No. 848, Wholesale Delivery Drivers and Salesmen's Union, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and helpers of America, affiliated with A. F. of L.; Thomas L. Pitts; Joint Council of Teamsters No. 42, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Gay Lillefloren, individually and as an agent of Wholesale Drivers and Salesmen's Union Local No. 848, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; Ralph Woolpert, individually and as Secretary-Treasurer and agent of Grocery Warehousemen's Local No. 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers

of America, affiliated with A. F. of L.; Russell Marks, individually and as agent of the defendant labor unions just hereinabove named; Irv Magisen, individually and as agent and representative of the labor unions just hereinabove named; Homer Ford, individually and as agent of the labor unions just hereinabove named; Irvin U. Gustafson, individually and as agent of the labor unions just hereinabove named; Syl Sylvane, individually and as agent of the labor unions just hereinabove named; John Doe Bowers, individually and as agent of the labor unions just above named; Bee Tumber, individually and as business representative of and secretary of Culinary Alliance and Bartenders Local No. 498, affiliated with A. F. of L.; Ted Willis, individually and as agent of General Teamsters Union, Local No. 431, of International Brotherhood of [fol. 49] Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; George Rollis, individually and as agent of Culinary Alliance and Bartenders Local No. 62, affiliated with A. F. of L.; John Doe Annand, individually and as agent of the labor unions just hereinabove named; John Doe One to John Doe Twenty, inclusive; Mary Roe One to Mary Roe Twenty, inclusive; Doe One Association to Doe Twenty Association, inclusive; Black & White Corporations, 1 to 5, inclusive; Richard Roe 1 to Richard Roe 10, inclusive; Southern Pacific Company, a corporation; A. V. Anderson, individually and as general freight agent of said Southern Pacific Company; California Motor Express, Ltd., a corporation; Los Angeles Albuquerque Express, a corporation; Railway Express Agency, a corporation; Western Truck Lines, Ltd., a corporation; Teskey Transportation Company, a corporation; Crow Transportation Company, a corporation; Local No. 388, International Printers, Pressmen and Assistants, affiliated with A. F. of L.; United Parcel Service, a corporation; Jane Doe Finnegan, individually and as agent of Food and Drug Council of Los Angeles, affiliated with A. F. of L.; Food and Drug Council of Los Angeles, affiliated with A. F. of L., their officers, agents, servants, or employees, from doing or causing to be done, or continuing to do, any of the acts *of* things herein complained of, and particularly from threatening, inducing, or in any manner causing any

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persons to be prevented from doing business with this plaintiff, and purchasing the products sold by it.

[fol. 50] That said defendants, and each of them, and their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with said defendants, or any of them, be permanently enjoined and restrained from doing or attempting to do, or causing to be done, directly or indirectly, by any means or device whatsoever, or by any person, the following acts:

(a) Combining or agreeing to cease performing, or to cause any employee of Southern Pacific Company, California Motor Express Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, Inc., California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other supplier, buyer, customer, or carrier of the plaintiff, to cease performing any services for said employers, or any of said employers, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff, or furnishing any supplies to plaintiff in its said business; or

[fol. 51] (b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended to, or tending to effectuate or carry out any such agreement;

(c) Provided, however, that such restrain-g and injunction do not apply to peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any such combination or agreement.

That the court make an order directing defendants, and each of them, to show cause at a time and place specified

in such order why they, and each of them, should not be enjoined and restrained, during the pendency of this action, from doing any of the things or acts herein mentioned.

That a temporary restraining order be granted to plaintiff, restraining the defendants, and each of them, until a hearing upon such order to show cause, from doing or causing or permitting to be done, any of the things or acts mentioned above.

That upon the hearing of said order to show cause, a preliminary injunction be granted, restraining defendants, and each of them, from doing any of the acts or things mentioned above.

2. General damages in the sum of $250,000.00.

3. For plaintiff's costs in this action, and for such other and further relief as to the court may seem proper.

Rupert B. Turnbull and Russell E. Parsons, By Russell E. Parsons, Attorneys for Plaintiff.

[fol. 52] *Duly sworn to by G. W. Riley. Jurat omitted in printing.*

[File endorsement omitted.]

(Here follow 3 photolithographs, Exhibits A, B, C)

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EXHIBIT A

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EXHIBIT C

(Uniform Domestic Straight Bill of Lading, [redacted] by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1941, as amended August 1, 1
3-42-11000M Sota

# UNIFORM STRAIGHT BILL OF LADING

ORIGINAL--NOT NEGOTIABLE

## SOUTHERN PACIFIC LINES

SOUTHERN PACIFIC COMPANY — Pacific Lines
PACIFIC MOTOR TRUCKING COMPANY PACIFIC TRUCK EXPRESS

Shipper's No.
Agent's No.

RECEIVED, subject to [illegible] on the date of the issue of this Bill of Lading.

At FARMER BROS. CO 3828 SO. MAIN ST. MAY 16 1946 194

From LOS ANGELES, CALIF

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to FARMER BROS. CO. % Pearl Upson + Son (The name of the consignee for the purpose of identification only.)

Destination Reno State of Nevada County of

Route

Delivering Carrier Car Initial Car No.

SERVICE DESIRED: Door to Door ( ). Door to Depot ( ). Depot to Door (✓). Depot to Depot ( ).

| No. Pkgs. | DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS | *Weight (Subj. to Corr.) | Class or Rate | Check Col. |
|---|---|---|---|---|
| 5 | Cases Coffee | 160 | | |

RECEIVED
MAY 16 1946
SOU. PAC. CO.
A. V. ANDERSON

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

PREPAID

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

Collect On Delivery $ For Account Of And Remit To

Street, City, State

C. O. D. Charge to be Paid By: Consignee ( ). Shipper ( ).

If this shipment moves between two ports by a carrier by water, the law requires that the Bill of Lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

FARMER BROS. CO. Shipper. Agent

Per 3828 SO. MAIN ST. LOS ANGELES, CALIF. Per

Permanent postoffice address of shipper

© 000 (This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

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[fol. 53] AFFIDAVIT OF TED EHLER—May 22, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ted Ehler, being first duly sworn, upon oath deposes and says:

That he is employed by the plaintiff, Farmer Bros. Co., and has been for more than eighteen years last past. That he is Director of Personnel and Labor Relations for said company.

That at about 9 P. M. on Monday, May 20, 1946, Leo Cale and Ivan Cale, who are truck drivers employed by the plaintiff, left the plant of Farmer Bros. Co. in Los Angeles, driving Diesel tractor and pulling trailers loaded with merchandise en route from Farmer Bros. Co.'s Los Angeles plant to branch plants throughout the northern part of this state and, after said drivers left Los Angeles, affiant received a telephone call yesterday, May 20, 1946, from Leo Cale, one of said drivers, who, in said conversation, stated to your affiant as follows:

"That as he, Leo Cale, and Ivan Cale, drove the Diesel tractors from the plant of Farmer Bros. Co. in Los Angeles, he, Leo Cale, recognized an automobile following him, containing two men whom he had seen in the picket line in front of Farmer Bros. Co. in Los Angeles; that said car containing the two pickets followed the trucks north and, as they reached Wheeler Ridge, which is some miles south of [fol. 54] Bakersfield, California, two other cars loaded with men commenced following the said Leo Cale and Ivan Cale, and, as they approached Bakersfield, and at about the vicinity of Highway Ninety-nine which is known as Union and 17th Streets, a car bearing a Washington State license pulled up alongside the said truck driven by said Leo Cale and asked said Leo Cale to pull over to the side of the road.

It was then 4 A. M. and the said Leo Cale did not know what the difficulty was or whether said person was lost and inquiring for information, so he pulled over to the *said* of the road. Immediately thereafter the said Leo Cale got out of the truck, looked up, and observed that he had been stopped almost in front of the Teamsters Union Hall, and he observed a number of men rush out of the hall. These men then surrounded the said Leo Cale, and he was told by

one of the men whom he had observed in the picket line in front of Farmer Bros.' Los Angeles plant that he and Ivan Cale had better turn their truck around and go back to Los Angeles; that they were not going to have any peace and that they would not let said drivers take the Farmer Bros.' trucks through San Joaquin Valley; that they would not be able to reach their destination, and they might as well go on back.

Said picket stated that he represented the Teamsters Union and that the Teamsters would see to it that they were stopped if they attempted to haul merchandise north on the Valley road or on the Coast road. Said picket then stated to the said Leo Cale:

[fol. 55] "You'd better get next to yourself and join up with the Teamsters. You know, sometimes men get their heads skinned in this kind of a game."

The said Leo Cale then stated that he telephoned for the police and after the police arrived, he and the said Ivan Cale drove their trucks away.

Ted Ehler.

Subscribed and sworn to before me this 22nd day of May, 1946. Loris V. Cady, Notary Public in and for Said County and State. (Seal.)

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[fol. 56] AFFIDAVIT OF TONY SINOZICH

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Tony Sinozich, being first duly sworn, upon oath deposes and says:

That he is employed by the plaintiff, Farmer Bros. Co., at Los Angeles, California; that he is employed by said concern as a truck driver.

That on May 7, 1946, affiant drove a truck belonging to Farmer Bros. Co. to the plant of California Container Company at 50th and Boyle Avenue, Los Angeles, California, for the purpose of picking up a load of paper coffee cartons at that location, which said cartons are printed especially for Farmer Bros. Co. and have its name thereon.

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That affiant noticed, as he left Farmer Brothers' plant, that he was followed by a man named Russell Marks, one of the defendants named in this action, and affiant has noticed the said Russell Marks in and about the plant of Farmer Bros. Co., and in the picket line around the plant.

When affiant reached the loading dock of the California Container Company, he atempted to put his truck in position to pick up a load of containers for Farmer Bros. Co. and, at that time, the said Russell Marks came to the [fol. 57] loading dock with a picket sign and approached one of the men on the dock, who, affiant has since learned, is the dock foreman, and said Marks stated to said foreman:

"Are you going to load that truck for Farmer Bros.? and the dock foreman then said: "Yes."

Thereupon the said Russell Marks stated:

"You'd better not. That concern is on the unfair list."

Thereafter, and at about 3:30 P. M. on the same day, affiant returned to the plant of California Container Company for a load of coffee cartons for Farmer Bros. Co. and the said dock foreman told affiant that the California Container Company could not make any further deliveries to Farmer Brothers; that they had been told by the union that "if they delivered any containers to Farmers Brothers, the union had threatened to picket their plant."

Thereupon, affiant had to leave the plant without the containers for the reason that said California Container Company would not deliver them because of the threats made to them by the Teamsters' Union.

That on Friday, May 17, 1946, affiant drove a truck of Farmer Bros. into the alley in back of Farmer Bros. plant in Los Angeles, California, and then drove the truck into the plant and after the truck had actually been placed inside of the plant, the said Russell Marks came up to affiant and, in a threatening manner, said to affiant:

"What's in that truck?"

[fol. 58] Thereupon affiant stated to the said Russell Marks:

"It's none of your business what's in that truck."

Thereupon the said Russell Marks said:

"Well, I'll see what's in the truck."

Thereupon the said Russell Marks jumped up in the back end of the truck forcibly, and with considerable force threw your affiant to one side of the truck and, at the same time, the said Russell Marks moved into the back of the truck and looked to see what was there.

Tony Sinozich.

Subscribed and sworn to before me this 21st day of May, 1946. Ray O'Brien, Notary Public in and for Said County and State. (Seal.)

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[fol. 59] AFFIDAVIT OF TED EHLER—May 21, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ted Ehler, being first duly sworn, upon oath deposes and says:

That he is employed by Farmer Bros. Co., plaintiff in the above entitled action, and has been so employed for more than 18 years last past and that, among other duties, he is Director of Personnel and in charge of labor relations.

That Farmer Bros. Co. is engaged in the business of importing green coffee, roasting, processing, packing, selling and distributing the same to customers throughout California, Nevada, Oregon, Arizona, Idaho, Utah, New Mexico and other states; that in addition to coffee, tea, spices and other commodities are sold to its customers. That in order to facilitate the sale of coffee, said Farmer Bros. Co. has set up a plant wherein are prepared "urns" for the purpose of brewing coffee; that this equipment is leased to customers and hundreds of said urns have been manufactured by Farmer Bros Co. and loaned under a lease arrangement to its customers.

That Farmer Bros. Co. has come to enjoy a very substantial and profitable business over a period of years, which business is well distributed throughout the states just

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above named. That in order to more readily carry on said business, branch offices are maintained throughout the State of California, and in the other states named.

That affiant is personally acquainted with every employee of Farmer Bros. Co., and it has more than 300 [fol. 60] employees. That there is not now, nor has there existed, any dispute with any of the employees of Farmer Bros. Co. involving wages, hours, or working conditions, or any other dispute related thereto, and there was no such dispute in the month of April or the month of May, 1946.

That all of the employees are satisfied with working conditions and this plant has been exceptionally free of any disputes of any kind with any of its employees, all of whom seem to be well satisfied with their positions, hours, working conditions and rates of pay; and affiant states that the rates of pay are at least as much, if not more than, the rates of pay for like work fixed by any of the defendant unions named in plaintiff's complaint.

That affiant has read the plaintiff's complaint and makes the same a part hereof as fully as if set forth herein in detail. That affiant believes all of the matters and things therein set forth are true and correct.

That beginning in February, 1946, and on or about February 28, 1946, the defendant unions commenced a program of having their representatives call upon affiant and other representatives of Farmer Bros. Co. That on or about February 28, 1946, the defendants Ralph Woolpert and Gay Lillefloren called upon Farmer Bros. Co. and, in the presence of affiant, stated that the Teamsters' Union was "out to organize Farmer Bros. Co." and that they were "going to stay with it this time until they did." That "they wanted all production workers and all sales drivers." That for some time prior to that meeting affiant had noticed persons from the defendant unions stayed at the employee entrances of Farmer Bros. Co., who were attempting to solicit membership in said defendant unions from the [fol. 61] employees of plaintiff, as they went to and from the plant.

That on or about March 7, 1946, affiant was invited to meet with the defendant Ralph Woolpert at the Teamsters' Hall at 9th and Union Streets, Los Angeles, California, and did so. That after showing affiant the building, affiant and the said defendant Woolpert went to the Mayfair Hotel

for lunch and, at that time and place, the defendant Woolpert stated to affiant:

"The Teamsters want to organize your plant. We would like to keep our campaign on a basis strictly within the limits of the Wagner Act. We want to obtain fifty-one per cent of your employees."

That on March 8, 1946, the said defendant Ralph Woolpert and the defendant Teamsters Union caused notice to be sent to the employees of Farmer Bros. Co. to the effect that a meeting would be held on March 12, 1946, and that "unless said Farmer Bros. Co. employees attended said meeting, they would be 'blackballed' and would not be permitted to work for Farmer Bros. Co."

That on Wednesday, Thursday and Friday, March 13th, 14th and 15th, 1946, pickets, agents of the defendant unions, stood at the entrances of the plants of Farmer Bros. Co. and told various employees, as they left the plant, that "unless they joined the defendant unions and attended meetings, rough stuff would start and picket lines would be put at Farmer Bros. Co. on March 18, 1946."

That on Friday, March 15, 1946, the defendant Russell Marks and the defendant Gay Lillefloren talked with Roy Farmer, President of Farmer Bros. Co., affiant, and others, and said in substance or effect:

[fol. 62] "Our campaign to get union members in your plant is going too slow. We have had an order from the higher ups in the AFL that, unless we have better success, we are going to spread all over the state, and we will have to put pickets around your plants."

We then told said agents of said union that Farmer Bros. Co., was in interstate commerce and that we could not take sides and that Farmer Bros. could not solicit members for the union.

Thereupon defendants Lillefloren and Marks said, in substance or effect:

"At that rate, we would be years trying to get a majority of the employees of your plant as members."

That on March 22, 1946, representatives of the Teamsters Union approached employees of Farmer Bros. Co. in

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the rear of the Farmer Brothers' plant at Los Angeles, and said in substance or effect:

"Unless we get all the issues settled and unless you people join the union and do it quick, we are going to use force tactics. We will follow your salesmen to all of your accounts. We will stop all deliveries to your customers if they buy from Farmer Bros. All of Farmer Bros. accounts we have checked and they can't operate on coffee alone and they are all vulnerable to secondary boycott. We'll keep them from getting any deliveries of anything. You fellows better sign up."

That on March 22, 1946, the defendants Annand and Finnegan, and a man by the name of Dayton, talked with affiant and Roy Farmer, President of Farmer Bros. Co., and Ferne Corrington of Farmer Bros. Co., and said in substance or effect:

[fol. 63] "You people here at Farmer Brothers will either have to call your employees together and suggest they join our union, or we will put a picket line here next Monday." (March 26, 1946.) "Unless you fellows begin helping us, we are going to turn on the heat."

On April 15, 1946, a meeting was held, attended by affiant and Roy Farmer and the defendants Ralph Woolpert and Tommy Pitts, Ted Willis, Russell Marks and Gay Lillefloren, at which time said defendants, in substance or effect, stated to affiant and Roy Farmer:

"We have been appointed as a committee by the Western Conference of Teamsters at Seattle, and we have to settle the Farmer Brothers problem. It is a 'must' that Farmer Brothers employ only union people. You have only two choices: the high road or the low road. The high road is much more pleasant, less trouble, and it only requires help from you people in organizing your plant. The low road is rough. It means trouble, picket lines, rough stuff. We do not represent fifty-one per cent of your workers, and we must have your help and ideas on how to get this majority."

At that time affiant and Roy Farmer told this group of defendants that we had to remain neutral; that we had not put any stones in the way of the union's organizing campaign, but that "we would have to remain neutral."

On April 29, 1946, a picket line was placed at the plant of Farmer Bros. Co. in Los Angeles, California. That in the picket line there were the defendants Thomas Pitts, Gay Lillefloren, Russell Marks, Irv Magisen, Ralph Woolpert, Homer Ford, Irvin Gustafson, John Doe Annand, Syl Sylvane, and others.

[fol. 64] That since the placing of the picket line on April 29, 1946, at times large numbers of pickets have gathered at the entrance to Farmer Bros. plant in Los Angeles, California, and on May 20, 1946, almost one hundred and fifty (150) pickets massed in front of the entrances.

That since the picket line was placed in front of Farmer Bros. Co. the defendant unions have notified common carriers with whom plaintiff has done business and have notified employees of said common carriers that Farmer Bros. Co. are on strike, and said common carriers' employees now refuse to handle merchandise from Farmer Bros. Co. and said common carriers state that they are unable to handle plaintiff's merchandise. Said common carriers include Southern Pacific Company, a corporation; California Motor Express, Ltd., a corporation; Railway Express Agency, a corporation; Western Freight Lines, Ltd., a corporation; Teskey Transportation Company, a corporation, and Crow Transportation Company, a corporation.

That the defendant unions have notified employees of numerous customers of plaintiff, from Los Angeles to Fresno, and said employees of said customers have refused to handle the coffee of Farmer Bros. Co. or to render any service for their respective employers so long as they handle Farmer Brothers' coffee.

That numerous suppliers of Farmer Bros. Co., including suppliers of green coffee, oxygen, distilled water, and numerous other commodities, have been told by their employees that the defendant unions have instructed them not to handle anything that was going to Farmer Bros. Co., that it was "hot"; and said employees have refused to render services for said common carriers, suppliers and [fol. 65] purchasers of merchandise, who have regularly been doing business with plaintiff until this time.

That one of the customers of the plaintiff, Brittingham's Commissary Company, has been using in excess of 12,000 pounds of coffee per month from Farmer Bros. Co. It is a highly valued customer and the employees of Brit-

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tingham's Commissary Company have been notified by the defendant unions that they cannot and must not handle Farmer Brothers' coffee. Said employes have told Brittingham's Commissary Company that they will not handle Farmer Brothers' coffee and that if Brittingham's Commissary Company handles Farmer Brothers' coffee, they, the said employees, will go out on strike.

That Farmer Bros. Co. now finds it is unable to obtain raw materials with which to carry on its manufacturing activities; it is unable to get common carriers to handle its merchandise, and it is unable to get customers to take its goods, for fear that the employees of said common carriers, suppliers and customers will immediately go on strike if said carriers, customers and suppliers continue to do business with Farmer Bros. Co.

That already Farmer Bros. Co. has suffered loss running into thousands of dollars, which loss is continuing to mount as each day goes by.

Ted Ehler.

Subscribed and sworn to before me this 21st day of May, 1946. Ray O'Brien, Notary Public in and for Said County and State. (Seal.)

[fol. 66] AFFIDAVIT OF LOUIS M. CLEMENS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Louis M. Clemens, being first duly sworn, upon oath deposes and says:

That he is employed by Farmer Bros. Co., plaintiff in the above entitled action and that he was so employed on or about Thursday, March 16, 1946.

That on the previous night affiant left the plant of Farmer Bros. Co. in Los Angeles, California, to go home and he observed a man he had seen in the picket line about the Farmer Bros. Co. plant who was following him in an automobile. After driving several blocks out of his way, affiant was finally able to park his car several blocks away from his home and walk the rest of the way home.

Early on the next morning, to wit, May 16, 1946, affiant left his home and arrived at the plant of Linde Air Products

Company at 4771 Worth Street, Los Angeles, California, from which plant Farmer Bros. Co. purchases tank oxygen for welding in the urn shop and for other activities of its plant.

Affiant drove into the yard of the Linde Air Products Company and backed his truck up to take up a load of tanks full of oxygen. As affiant did so, he noticed the defendant Irv Magisen came up to the loading dock and said to the foreman, a Mr. Russell:

"You'd better not load this Farmer Brothers' truck, as we have a strike down there. My name is Magisen. I am from the Teamsters Union."

[fol. 67] Thereupon affiant stated to the said Magisen and Russell:

"There is no strike at our plant. The Teamsters are just trying to organize us, but there is no strike."

Thereupon the defendant Magisen said to Russell:

"Well, I don't want you to load this truck. This stuff is 'hot'."

Thereupon Russell said:

"Well, these people buy from us. We have to sell to them and deliver the merchandise to them."

Thereupon Magisen said, in substance or effect:

"This stuff is 'hot.' You wouldn't want a picket line around your place, would you? All of the drivers for the Crow Transportation Company, who do your driving and delivering, are members of our union and we will pull them off of every truck that hauls for you, if you let this man have this stuff."

Louis M. Clemens.

Subscribed and sworn to before me this 21st day of May, 1946. Ray O'Brien, Notary Public in and for Said County and State. (Seal.)

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[fol. 68] PLAINTIFF'S POINTS AND AUTHORITIES ON APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. The complaint and affidavits presented herewith show that great and irreparable injury will result to plaintiff unless a temporary restraining order issue, without notice, pending the hearing on the order to show cause, and a preliminary injunction thereafter, pending the trial on the merits.

*Code of Civil Procedure*, Sec. 527;
*Bueneman v. Santa Barbara*, 8 Cal. (2d) 405, 408;
*Steiner v. Long Beach Local No. 128*, 19 Cal. (2d) 676;
*Cook County Brick Co. v. Labahn Brick Co.*, 92 Ill. App. 526.

2. The making of any combination or agreement to cease performing, or to cause any employe to cease performing any services for any employer, or to cause loss or injury to employer, or to its employes, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of, any other employer, because of a dispute between the latter and a labor organization, is unlawful.

*California Labor Code*, Chap. 8, Secs. 1131 to 1136, inclusive.

[fol. 69] 3. Any person injured or threatened with injury by reason of the making of any such combination or agreement is entitled to injunctive relief in a proper case.

*California Labor Code*, Sec. 1133.

The verified complaint and affidavit show this to be a case wherein the unlawful agreement and combination is resulting in irreparable injury to plaintiff, for the redress of which there is no adequate remedy at law.

The acts sought to be accomplished by the defendants, namely, the forcing of plaintiff to require his employees to join a union which does not represent the majority of such employees for bargaining purposes, is illegal.

*N. L. R. B. v. Mason Mfg. Co.*, 126 Fed. 2d, page 810.

The contract sought by the defendants would be void.

Section VIII, 3 (*National Labor Relations Act*).

In support of our contention that the "hot cargo and secondary boycott law," as enacted, is constitutional, we cite the case of *Carpenters and Joiners Union of America v. Ritter's Cafe*, 149 S. W. Rep. 694, which, in effect, held that the Constitution did not forbid the state from setting the limits of permissible contest upon the industrial combatants.

[fol. 70] See

*Labor Cases*, Vol. 5, page 51;
137 U. S., Vol. 315, page 722,

in which the court has this to say about the subject matter:

In forbidding the conscription of neutrals in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous policy of the states. We hold that the Constitution does not forbid Texas to "draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share of the products of industry are subject to modification or qualification in the interests of the power of the State to set the limits of permissible contest open to industrial combatants.' "

*Thornhill v. Alabama*, 310 U. S. 88, 103-4 (2 *Labor Cases* 17,059).

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the *power to enact that policy into law.*"

See also the opinion of Judge Wilson in *Baer v. Los Angeles Building Trades Council*, Los Angeles Superior Court No. 492,770, wherein the court said:

[fol. 71] "There may be an illegal conspiracy to injure, an unlawful restraint of trade, intimidation, coercion that is more than mere persuasion, and other acts not protected by the Constitution. Any acts constituting a secondary boycott, included in Section 1134 of the Labor Code, that go beyond peaceful picketing, truthful publication, and lawful assemblage, and acts that are not included within the constitutional right of free speech, publication and assembly, may be enjoined."

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May we also respectfully point out that, on April 1, 1946, the Superior Court of the State of California, in and for the County of Orange (the Honorable Raymond Thompson, Judge presiding) in Case No. 45686, entitled *Excelsior Creamery Co., Ltd., vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 93*, at a hearing for a preliminary injunction, in which extensive arguments were had on the constitutionality of the "hot cargo and secondary boycott law" (Chap. 8, Div. 2, Part 3, *Labor Code*), granted a preliminary injunction and held:

"The granting of a preliminary injunction is a matter of discretion with the trial court and that discretion should be exercised *in favor of the party most likely to be injured.*"

Paige v. Akins, 112 Cal. 41.

"Applying this rule, as laid down by the Supreme Court of the State of California, the preliminary injunction should be granted."

[fol. 72] May we respectfully direct the court's attention to the case of Goodyear Tire & Rubber Co. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, *et al.*, Los Angeles Superior Court No. 512,656, wherein the court granted a temporary injunction, with Judge Henry M. Willis presiding.

Acts of violence, force, menace, and threats of violence, when used to influence the employer, are unlawful, and such acts of any individual or number of individuals may be enjoined.

See:

Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 85 Supreme Court Advance Opinion 8, page 497, 312 U. S. 287;

Lisse *et al.* v. Local Union No. 31, 2 Cal. 2d 312.

"Picketing set in a background of violence, where it could justifiably be concluded that the momentum of fear generated by past violence would survive, may be enjoined."

Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U. S. pages 287-294.

4. In the case of H. C. Ramser, dba Upholstery Supply Company, vs. Van Storage and Furniture Drivers, Packers

and Helpers Local Union No. 389, Judge Henry M. Willis in that case, bearing Superior Court number 512,326, recently rendered an exhaustive and thorough opinion, in which it [fol. 73] was held that the "Hot Cargo and Secondary Boycott Law" is constitutional.

In connection with the case of Ramser vs. Van Storage and Furniture Drivers, Packers and Helpers Union No. 389, *et al.* (case No. 512,326), the defendant union made application to the District Court of Appeal for a writ of prohibition, which application was denied. This is the first action by any appellate court in the State of California directly relating to the Hot Cargo and Secondary Boycott Law.

5. The demand of the defendant union for a closed shop and the picketing in support thereof is illegal because such a demand requires an illegal act on the part of plaintiff.

Soldiers and Sailors Relief Act of the United States, as amended;

Selective Service Act of the United States, as amended.

Rupert B. Turnbull and Russell E. Parsons, By Russell E. Parsons.

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[fol. 74] In Superior Court of Los Angeles County

Temporary Restraining Order and Order to Show Cause—May 22, 1946

Upon reading the verified complaint and affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the court that this is a proper case for the issuance of a temporary restraining order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

It is hereby ordered that defendants, and each of them, be and appear before the above named court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which

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they, and each of them, their agents, employes and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded [fol. 75] to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices [fol. 76] or making any threats intended or tending to effectuate or carry out any such agreement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of car-

rying out any combination or agreement herein restrained or enjoined.

And it is further ordered that copies of the complaint, summons, the within order to show cause and temporary injunction, together with plaintiff's points and authorities and affidavit, be served upon defendants on or before May 25, 1946. [Let the temporary injunction issue when plaintiff has caused to be signed and approved a bond in the sum of $.....]* [W.,J.]

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, Judge of the Superior Court.

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[fol. 77] In Superior Court of Los Angeles County

Demurrer of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848—Filed May 31, 1946

Comes now defendant above named and appearing for itself and itself alone and demurs to plaintiff's complaint and for cause of demurrer alleges:

I

That said complaint does not state facts sufficient to constitute a cause of action or for injunction.

Wherefore, having fully answered, defendant prays judgment as to the sufficiency of said complaint.

V. P. Lucas, Attorney for Defendant.

I hereby certify that the foregoing demurrer is taken in good faith and not for the purpose of delay.

V. P. Lucas, Attorney for Defendant.

[Points and Authorities omitted herein.]

[File endorsement omitted.]

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* Matter struck out in copy.

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[fol. 78] [Title of Court and Cause]

No. 514535

AFFIDAVIT OF SERVICE OF . . .

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Russell E. Parsons, Jr., being sworn, says: I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action; I served the temporary restraining order and order to show cause, summons, complaint, affidavits and plaintiff's points and authorities in this action by personally delivering to and leaving with the following persons at the County of Los Angeles, on the dates set opposite their respective names, a true copy thereof, to-wit:

| | |
|---|---|
| Irv Magisen, individually and as agent of Wholesale Del. Drivers & Salesmen's Union, Local 848, aff. with International Bro. Teamsters, etc., A. F. of L., 39th & Main Sts., Los Angeles, Calif. | May 22, 1946. |
| John Doe Bowers, individually and as agent of unions just above named, 38th & Main Sts., Los Angeles. | May 23, 1946. |
| Homer Ford, individually and as agent of unions just above named, 38th & Main Sts., Los Angeles. | May 23, 1946. |
| [fol. 79] Western Truck Lines (Dave Tanzola, Vice Pres.), 2835 S. Santa Fe, Los Angeles, California. | May 23, 1946. |

Russell E. Parsons, Jr.

Subscribed and sworn to before me this 27th day of May, 1946. (Seal) Ray O'Brien, Notary Public in and for the County of Los Angeles, State of California.

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[fol. 80] IN SUPERIOR COURT OF LOS ANGELES COUNTY

DEMURRER OF BEE SCHMIDT, ET AL.—Filed June 5, 1946

Come now defendants Bee Schmidt (sued herein as Bee Tumber) as business representative of and secretary of

Culinary Alliance and Bartenders Local No. 498; Ted Wills (sued herein as Ted Willis) as agent of General Teamsters Union, Local No. 431, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with A. F. of L.; George Rollis as agent of Culinary Alliance and Bartenders Local No. 62, affiliated with A. F. of L.; Fred V. Irvin, Secretary-Treasurer of Retail Delivery Drivers, Salesmen and Helpers of Alameda County, Local No. 588 (sued herein as John Doe One); H. C. McNally of Retail Delivery Drivers, Salesmen & Helpers, Local 278 (sued herein as John Doe Two), and Line Drivers Local 224 (sued herein as Doe One Association), and by this, their demurrer to the complaint herein on file, as and for grounds of demurrer specify:

I

That this court has no jurisdiction of the subject of this action.

II

That this court has no jurisdiction of the subject of this action in this: in that this is a suit based upon the exercise by these defendants of their constitutional rights and by this suit plaintiff seeks a judgment of this court abridging said constitutional rights, which judgment this court has no jurisdiction to render.

[fol. 81]

III

That this court has no jurisdiction of the subject of this action in this: in that by said action it is sought to abridge the rights assured and guaranteed to the people and particularly to these defendants and each of them by Sections 9, 10 and 18 of Article I of the Constitution of the State of California and by the First and Fourteenth Amendments to the Constitution of the United States; particularly the rights of free speech, free press and freedom of assemblage, and that it is beyond the jurisdiction of this court to abridge said rights.

IV

That this court has no jurisdiction of the subject of the action in this: in that the court lacks authority or power

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to act in the case except in a particular way, to-wit: to deny the relief prayed for by plaintiff.

V

That said complaint does not state facts sufficient to constitute a cause of action.

VI

That said complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them.

VII

That the first count of said complaint does not state facts sufficient to constitute a cause of action.

VIII

That the first count of said complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them.

[fol. 82]

IX

That the second count of said complaint does not state facts sufficient to constitute a cause of action.

X

That the second count of said complaint does not state facts sufficient to constitute a cause of action against these defendants, or any of them.

XI

That neither said complaint nor either of its counts states facts sufficient to constitute a cause of action against these defendants or any of them in this: in that this is a suit based upon the exercise by these defendants of their constitutional rights and by this suit plaintiff seeks a judgment of this court abridging said constitutional rights.

XII

That neither said complaint nor either of its counts states facts sufficient to constitute a cause of action in this:

in that under said complaint this court has no authority or power to render any judgment except to deny the relief asked for by plaintiff or to dismiss the action.

XIII

That said complaint does not state facts sufficient to constitute a cause of action in this: in that it is based on a boycott of material or product of the plaintiff, which is generally recognized as a primary, not a secondary boycott.

XIV

That said complaint does not state facts sufficient to constitute a cause of action in this: in that it alleges a boycott of plaintiff's materials and products in the hands of other parties. That such boycott is action in good [fol. 83] faith by defendant unions, in their own interest and within their own economic field.

XV

That said complaint does not state facts sufficient to constitute a cause of action in this: in that the picketing alleged to have been done, or threatened, is a constitutional right, the exercise of which cannot be abridged or illegalized by state action or state policy.

XVI

That said complaint does not state facts sufficient to constitute a cause of action in this: in that the picketing alleged to have been done, and threatened, was pursuant to a demand for a closed-shop, recognized by the Supreme Court of California for many years as a constitutional right.

XVII

That said complaint does not state facts sufficient to constitute a cause of action in this: in that it seeks to make illegal a refusal to work by defendants, individually or by virtue of combination or agreement, and that such injunction would be a violation of the Thirteenth Amendment of the Constitution of the United States.

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XVIII

That said complaint is uncertain in this: in that it does not appear therein, nor can it be ascertained therefrom:

(a) To whom the demand alleged in paragraph XIX, page 9, lines 26 to 31, was made on behalf of the plaintiff, nor the exact words constituting such demand.

(b) When the conversation alleged in paragraph XXI, lines 18 to 27 inclusive of page 13, took place, where it [fol. 84] took place, who were present, what individuals made the statements, and to what individuals they were addressed, and the exact language used.

(c) What is meant by the allegations in paragraph XXII, page 14, lines 6, 7, 8, 14 and 15, to the effect that certain things "would" happen or "would" be done.

(d) How, or in what manner pickets "attempted to stop persons," as alleged in paragraph XXVIII, page 19, line 29, and whether said attempt was by physical action or moral suasion.

(e) What is meant by the word "threatened" in paragraph XXVIII, page 19, line 31, and whether the threat was to do a lawful or an unlawful thing.

XIX

That said complaint is ambiguous in each of the respects in which it is hereinabove specified as uncertain.

XX

That said complaint is unintelligible in each of the respects in which it is hereinabove specified as uncertain.

Wherefore, these demurring defendants pray that plaintiff take nothing by this, its said action, and that these defendants go hence with their costs.

Clarence E. Todd, John C. Stevenson, Attorneys for Demurring Defendants.

I hereby certify that the above demurrer is, in my opinion, good in point of law, and that the same is not filed for delay.

Clarence E. Todd.

[fol. 85] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 514555

FARMER BROS. CO., a Corporation, Plaintiff,

vs.

WHOLESALE DELIVERY DRIVERS AND SALESMEN'S UNION, LOCAL 595, et als., Defendants.

POINTS AND AUTHORITIES ON DEMURRER

1. *The drastic sanctions of equity may not be invoked without a detailed showing of specific facts justifying such relief.*

McKay v. Retail Automobile Salesmen, 16 Cal. (2d) 311, 320.
Davitt v. American Bakers Union, 124 Cal. 99.

The complaint alleges nothing more than a demand for a closed shop agreement and, pursuant thereto, picketing and boycotts, primary and secondary.

2. *Our higher courts, for many years, have upheld the right of primary and secondary boycott as a constitutional right.*

*Ex parte* Porterfield, 28 A. C. 102 at 124.
Park & Tilford v. Teamsters, 27 A. C. 620 at 629.
Emde v. San Joaquin Labor Council, 23 Cal. (2d) 146 at 155.
Fortenbury v. Superior Court, 16 Cal. (2d) 405, 408.
Smith Metropolitan Market v. Lyons, 16 Cal. (2d) 389 at 395.
McKay v. Retail Automobile Salesmen, 16 Cal. (2d) 311 at 319.
*In re* Lyons, 27 Cal. App. (2d) 293 at 306.

[fol. 86] 3. *Since the enactment of the Hot Cargo Act and up to the order of this court in Ramser v. Van Storage and Furniture Drivers, each Superior Judge to whom this question was presented refused on constitutional grounds to restrain peaceful picketing pursuant to a secondary boycott.*

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(a) Judge Woodward of San Joaquin County, in Brookhart v. Clark, on constitutional grounds, sustained repeated demurrers to a complaint under the Hot Cargo Act.

(b) Judge Emmet Wilson of this court, in Bear v. Los Angeles Building Trades Council, No. 492770 of the files of this court, considered an elaborate complaint, setting out in great detail an effective secondary boycott of subcontractors and material men, and held unequivocally that insofar as the Hot Cargo Act sought to restrain a secondary boycott as their pleading, it was in contravention of the Fourteenth Amendment.

(c) Judge Morrison, in Truman v. Amalgamated Meat Cutters, No. 44061, Superior Court, Orange County, refused on constitutional grounds to enjoin a secondary boycott, identical in every essential element with the one at bar.

(d) Judge Thompson, in Excelsior Creamery v. International Brotherhood, No. 45686, Superior Court, Orange County, held that the constitutionality of the Hot Cargo Act was not material, since plaintiff conceded the lawfulness of the secondary boycott, and issued no injunction against picketing.

(e) And Judge Dean Sherry of San Diego County, in Union Ice Company v. Sales Drivers, No. 131560, Superior Court, San Diego, in a fourteen-page opinion, discussed [fol. 87] the constitutional question thoroughly and held, as did Judge Emmet Wilson, that the Hot Cargo Act was unconstitutional insofar as it sought to prohibit a secondary boycott there involved, which was in all essential respects identical with the secondary boycott pleaded in the case at bar.

4. *The policy of the Hot Cargo Act has never been upheld by the Supreme Court of the United States or the Supreme Court of California.*

The Hot Cargo Act is an emergency act, enacted in 1941 to cover "this present critical period of National emergency and intensive armament," Labor Code, Section 1131, and its contemplated duration was less than two years, that is to say, until May 1st, 1943, unless the emergency or a state of war should longer continue. Labor Code, Section 1135.

It is idle then, to compare this temporary enactment with the statute of Texas, construed in Carpenters and Joiners v. Ritter's Cafe, 315 U. S. 722, where the state policy of Texas was upheld, or with other declarations of state policy which the Supreme Court of the United States has overruled. Thornhill v. Alabama, 310 U. S. 88; Swing v. A. F. of L., 312 U. S. 321; Thomas v. Collins, 323 U. S. 516.

5. *"State Policy" is never constitutional where it contravenes constitutional rights.*

Swing v. A. F. of L., 312 U. S. 321 at 326.

"The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether its limits be defined by statute or by the judicial organ of the state."

[fol. 88] 6. *The Hot Cargo Act, since it clearly abridges constitutional rights, is not protected by any presumption of constitutionality, since the presumption which ordinarily supports a legislative act is met by the overwhelming favor accorded to the constitutional rights protected by the First and Fourteenth Amendments.*

Thomas v. Collins, 323 U. S. 516, 529 and 530.

7. *This court should uphold the constitutional guarantees of free speech, as expressed in peaceful boycott and peaceful picketing, and should follow the decisions of our high courts upholding those constitutional rights.*

*Ex parte* Porterfield, *supra.*
Smith Metropolitan Market v. Lyons, *supra.*
McKay v. Retail Automobile Salesmen, *supra.*
*In re* Lyons, *supra.*

8. *The Hot Cargo Act unconstitutionally attempts to restrict the unqualified right of workmen to refuse to work for an employer who handles "unfair" products or to work upon products which such workmen may regard as "unfair."*

"Any employee is 'free to abstain from work for good reasons, for bad reasons, for *no reasons*' and he may also enter a '*free combination* of employees in exercising' the 'right to be employed or not as *they* see fit.' (Emphasis

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ours.) This freedom of action respecting one's own labor is *no less sacred than the right of communication.* Compulsory service by members of the union to the *employer's customer* would constitute an invasion of their inalienable constitutional rights, and the fact that the refusal is the result of concert of action does not give it the taint of [fol. 89] illegal conspiracy, for such combination is in the pursuit of a common objective deemed to be for the general good and welfare' (of the union) 'and is therefore wholly lawful." (Emphasis ours.)

Court of Errors & Appeals of New Jersey, 129 N. J. Eq. 570.

Dated: This 5th day of June, 1946.

Clarence E. Todd, John C. Stevenson, Attorneys for Demurring Defendants.

AFFIDAVIT OF BEE SCHMIDT, SUED HEREIN AS BEE TUMBER, AS BUSINESS REPRESENTATIVE, ETC.

Comes now Bee Schmidt, sued herein as Bee Tumber, as business representative of and secretary of Culinary Alliance and Bartenders Local No. 498, and by this, her affidavit, deposes and says:

That she has read the complaint herein, and in particular paragraph XXXII thereof, on page 29. Affiant denies all of the allegations of said paragraph XXXII, except the allegations in lines 14 to 17, inclusive, thereof, to the effect that Central Labor Council of Santa Barbara County placed the plaintiff, Farmer Bros. Co., upon the unfair list and the don't patronize list. Aside from said allegation, [fol. 90] this affiant denies each and every, all and singular, of the allegations of said paragraph XXXII.

Further affiant sayeth not.

Dated May 31st, 1946.

Bee Schmidt, Sued Herein as Bee Tumber, etc.

Subscribed and sworn to before me this 31st day of May, 1946. Rae Uglow, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires May 28, 1949. (Seal.)

AFFIDAVIT OF MINNIE HILL

STATE OF CALIFORNIA,
County of Fresno, ss.:

Minnie Hill, being first duly sworn, deposes and says:

My name is Minnie Hill and I am the owner and operator of the New Victory Cafe located at 1050 Broadway, Fresno, California;

[fol. 91] That on or about May 15, 1946, Ted Wills and George Rollis came to my place of business and after a few general words of greeting, the following conversation was had with reference to Farmer Bros. Company:

"Farmer Bros. is on the unfair list and you will just have to stop using their products."

The quotation of a conversation as alleged to have occurred and as set forth on pages 15 and 16 commencing with line 30 on page 15 and ending with line 11 on page 16 just did not take place.

Minnie Hill.

Subscribed and sworn to before me this 29th day of May, 1946. Lawrence Bluyers, Notary Public in and for Said County and State. (Seal.)

AFFIDAVIT OF TED WILLS

STATE OF CALIFORNIA,
County of Fresno, ss:

Ted Wills, being first duly sworn, deposes and says:

That I am the agent of General Teamsters Union, Local No. 431, of International Brotherhood of Teamsters, Chauf-

[fol. 92] feurs, Warehousemen and Helpers of America, affiliated with American Federation of Labor;

That my name is Ted C. Wills and I was sued herein as Ted Willis;

That on or about May 15, 1946, in company with George Rollis, we went to the New Victory Cafe, located on Broadway in the City of Fresno, California, and there talked with the proprietor of the said New Victory Cafe;

That the entire conversation, except for a few words of greeting, consisted of the following:

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"There is a labor dispute between Farmer Bros. and the Teamsters and we would appreciate your cooperation. That the proprietor of the said New Victory Cafe replied, 'I have carried a card for many years in Local 62 and I know that is the only way we can get any place, is by cooperation.' "

The allegations as stated on page 15, commencing at line 30, to and including line 11 on page 16, is an absolute misstatement of fact and not one allegation of truth in any part or portion thereof and no such conversation occurred or at any time took place between this affiant or in the presence of affiant with any person of the New Victory Cafe.

Ted C. Wills.

Subscribed and sworn to before me this 28th day of May, 1946. Louis J. Coelho, Notary Public in and for the Said County and State. (Seal.)

[fol. 93] AFFIDAVIT OF GEORGE ROLLIS

STATE OF CALIFORNIA,
County of Fresno, ss:

George Rollis, being first duly sworn, deposes and says:

That I am the agent of Culinary Alliance and Bartenders Local No. 62, affiliated with American Federation of Labor;

That on or about May 15, 1946, in company with Ted Wills, sued herein as Ted Willis, we went to the New Victory Cafe, located on Broadway in the City of Fresno, California, and there talked with the proprietor of the said New Victory Cafe;

That the entire conversation, except for a few words of greeting, consisted of the following:

"There is a labor dispute between Farmer Bros. and the Teamsters and we would appreciate your cooperation. That the proprietor of the said New Victory Cafe replied, 'I have carried a card for many years in Local 62 and I know [fol. 94] that is the only way we can get any place, is by cooperation.' "

The allegations as stated on page 15, commencing at line 30, to and including line 11 on page 16, is an absolute misstatement of fact and not one allegation of truth in any part or portion thereof and no such conversation occurred

or at any time took place between this affiant or in the presence of affiant with any person of the New Victory Cafe.

Geo. Rollis.

Subscribed and sworn to before me this 28th day of May, 1946. Lawrence Bluyers, Notary Public in and for the Said County and State. (Seal.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Huston T. Carlyle, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 864 So. Union Avenue, Los Angeles 14, California. That on the 5th day of June, A. D. 1946, affiant served the within demurrer on the plaintiff in said action, by placing a true copy thereof [fol. 95] in an envelope addressed to attorneys for plaintiff at the business address of said attorneys, as follows: Rupert B. Turnbull and Russell E. Parsons, Attorneys at Law, 306 West Third Street, Los Angeles 13, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Huston T. Carlyle.

Subscribed and sworn to before me this 5th day of June, 1946. Rae Uglow, Notary Public in and for Said County and State. My Commission Expires May 28, 1949. (Seal.)

[File endorsement omitted.]

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[fol. 96] IN SUPERIOR COURT OF LOS ANGELES COUNTY

DEMURRER OF DEFENDANTS, GROCERY WAREHOUSEMEN'S LOCAL 595 AND RALPH WOOLPERT, INDIVIDUALLY AND AS SECRETARY OF GROCERY WAREHOUSEMEN'S LOCAL 595—Filed May 31, 1946

Comes now Ralph Woolpert, individually and as Secretary of Grocery Warehousemen's Local 595, and demurs to the complaint herein on the following grounds, to wit:

I

That the first count of said complaint fails to state facts sufficient to constitute a cause of action against these defendants above named, or either or any of them.

II

That the second count of said complaint fails to state facts sufficient to constitute a cause of action against these defendants above named, or either or any of them.

III

That Sections 1131 to 1136, inclusive, of the Labor Code of the State of California, upon the basis of which the plaintiff has predicated both the first and/or second counts of its complaint, is in violation of the provisions of the Constitution of the United States and of the State of California, and is, therefore, unconstitutional.

IV

That the first count of said complaint fails to state facts sufficient to constitute a cause of action against these defendants.

[fol. 97]

V

That the first count of said complaint fails to state facts sufficient to constitute a cause of action against defendant, Ralph Woolpert, individually and as Secretary of Grocery Warehousemen's Local 595.

VI

That the second count of said complaint fails to state facts sufficient to constitute a cause of action against defendant, Grocery Warehousemen's Local 595.

VII

That the second count of the complaint fails to state facts sufficient to constitute a cause of action against defendant, Ralph Woolpert, individually and as Secretary of Grocery Warehousemen's Local 595.

VIII

That the first cause of action set forth in the complaint is ambiguous and that each and all of the parts and portions thereof hereinafter referred to, are ambiguous for the following reasons:

(a) That it cannot be ascertained from paragraph XXVIII of the complaint how or in what manner plaintiff has been injured and is being injured, and is threatened with continued and irreparable injury by the acts of defendants, inasmuch as it is alleged in said paragraph "That now and at all times herein mentioned, there existed and exists no strike and no lockout and no boycott either individually or in groups";

(b) That it cannot be ascertained therefrom nor from paragraph XIX of the complaint, how or in what manner plaintiff has been injured and is being injured and is [fol. 98] threatened with continued and irreparable injuries by the acts of the defendants therein set forth;

(c) That it cannot be ascertained therefrom nor from paragraph XX of the complaint how or in what manner plaintiff has been injured and is being injured and is threatened with continued and irreparable injuries by the acts of the defendants therein set forth.

IX

That paragraph XXII of the complaint is ambiguous and/or unintelligible and/or uncertain for the reasons and/or reason that it does not appear therein nor can it be ascertained therefrom: (a) what business agents and repre-

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sentatives of defendants made the statements therein referred to; (b) what connection, if any, said business agents and representatives have to the defendants; (c) which defendants informed suppliers that picket lines would be placed around such suppliers or customers.

X

That paragraph XXIII of the complaint is ambiguous and/or unintelligible and/or uncertain for the reasons and/or reason that it does not appear therein nor can it be ascertained therefrom: (a) what representatives of which of the defendants have called upon Brittingham's Commissary Company and made the statements set forth in said paragraph; (b) in that it cannot be ascertained therefrom what representatives of which unions called upon the Turret Cafe and made the statements there set forth.

[fol. 99]

XI

That paragraph XXIV of the complaint is ambiguous and/or unintelligible and/or uncertain for the reasons and/or reason that it does not appear therein nor can it be ascertained therefrom: what representatives of which unions informed the C. C. Rubbish Company as set forth in said paragraph.

XII

That paragraph XXVI of the complaint is ambiguous and/or unintelligible and/or uncertain for the reasons and/or reason that it does not appear therein nor can it be ascertained therefrom what representatives of which unions made the statements as to the coffee brokers, as set forth in said paragraph.

XIII

That paragraph XXXI of the complaint is ambiguous and/or unintelligible and/or uncertain for the reasons and/or reason that it does not appear therein nor can it be ascertained therefrom what representatives of which unions informed the common carriers set forth in the said paragraph that the products of plaintiff were hot cargo.

XIV

That paragraph III of the second cause of action is ambiguous and/or unintelligible and/or uncertain for the

reasons and/or reason that it does not appear therein nor can it be ascertained therefrom: (a) what proportion, if any, of the alleged damages claimed by plaintiff herein is chargeable against the defendant, Grocery Warehouse-[fol. 100] men's Local 595; (b) in that it does not appear therein, nor can it be ascertained therefrom how plaintiff estimates his damage to be in the amount of two hundred and fifty thousand ($250,000.00) dollars.

Wherefore, defendants, Grocery Warehousemen's Local 595 and Ralph Woolpert, individually and as Secretary of Grocery Warehousemen's Local 595, pray that plaintiff take nothing by its complaint, and that these defendants, and each of them, have judgment and/or costs.

David Sokol, Attorney for Said Defendants.

I hereby certify that the above demurrer is filed in good faith, and that the contentions made therein have merit.

David Sokol, Attorney for Defendants, Grocery Warehousemen's Local 595 and Ralph Woolpert, Individually and as Secretary of Grocery Warehousemen's Local 595.

[Points and Authorities omitted herein.]

Endorsed: Received copy of within Dem. this 31 day of May, 1946. Russell Parsons, by Thomas Connell, attorney for plaintiff.

[File endorsement omitted.]

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[fol. 101] In Superior Court of Los Angeles County

Motion of Ralph Woolpert to Strike—Filed May 31, 1946

To the Plaintiff Above Named and to Rupert B. Turnbull and Russell E. Parsons, Its Attorneys:

You and each of you please take notice that the defendant, Ralph Woolpert, individually and as Secretary of Grocery Warehousemen's Local 595, on the 7th day of June, 1946, at the hour of 9:30 A. M., or as soon thereafter as

counsel can be heard, will move this court in Department 34 thereof, for an order striking out from the complaint the following paragraphs:

All of paragraph VI.
All of paragraph XVII.
All of paragraph XIX.
All of paragraph XX.
All of paragraph XXI.
All of paragraph XXII.
All of paragraph XXIII.
All of paragraph XXIV.
All of paragraph XXV.
All of paragraph XXVI.
All of paragraph XXVII.
All of paragraph XXVIII.
All of paragraph XXXI.
All of paragraph XXXII.
[fol. 102] All of paragraph XXXIII.
All of paragraph XXXIV.
All of paragraph XXXV.

That said motion will be made and based upon all the papers, pleadings and files herein, including plaintiff's complaint and this motion.

That said motion will be made upon the grounds that each and/or all of the paragraphs, and/or portions, and/or parts of said complaint hereinabove designated, constitute and are irrelevant, and/or redundant, and/or immaterial matters, and/or constitute conclusions of law.

Dated Los Angeles, May 28, 1946.

David Sokol, Attorney for Defendants, Grocery Warehousemen's Local 595 and Ralph Woolpert, Ind. and as Secretary of Grocery Warehousemen's Local 595.

Endorsed: Received copy of the within motion to strike this 31st day of May, 1946. Russell Parsons, by Thomas Connell, attorney for plaintiff.

[File endorsement omitted.]

[fol. 103] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVITS OF SERVICE—Filed June 7, 1946

AFFIDAVIT OF SERVICE OF W. E. WATSON

STATE OF CALIFORNIA,
County of Los Angeles, ss:

W. E. Watson, being sworn, says: I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action; I served the order to show cause, summons, complaint, affidavits and plaintiff's points and authorities, temporary restraining order in this action by personally delivering to and leaving with the following person at the County of Los Angeles, on the date set opposite *their* respective *names*, a true copy thereof, to-wit:

Russell Marks, individually and as agent and representative of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, affiliated with AFL, May 24, 1946.

W. E. Watson.

Subscribed and sworn to before me this 31st day of May, 1946. Ray O'Brien, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[File endorsement omitted.]

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[fol. 104] AFFIDAVIT OF SERVICE OF ROY F. FARMER

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Roy F. Farmer, being sworn, says: I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action; I served the order to show cause, summons, complaint, affidavits and plaintiff's points and authorities, temporary rest, order in this action by personally delivering to and leaving with the following person at the County of Los Angeles, on the date set opposite *their* respective *names*, a true copy thereof, to-wit:

Gay Lillefloren, individually and as representative and agent of Wholesale Delivery Drivers and Salesmen's Union Local, No. 848, affiliated with AFL. May 24, 1946.

Roy F. Farmer.

Subscribed and sworn to before me this 31st day of May, 1946. Ray O'Brien, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[File endorsement omitted.]

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[fol. 105] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVITS OF TED EHLER AND ROY FARMER IN SUPPORT OF CITATION FOR CONTEMPT—Filed June 7, 1946.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ted Ehler and Roy F. Farmer, each being first duly sworn, each testify and affirm as follows:

That on the 24th day of May, 1946, at about 3:55 P. M. at 39th and Main Streets, Los Angeles, Roy F. Farmer served defendant G. Gay Lillefloren with a complete and true copy of the complaint, summons, temporary restraining order and order to show cause (dated May 22, 1946, signed by Judge Willis), points and authorities and affidavits of Ted Ehler *et al.*, by delivering to and leaving same with said defendant G. Gay Lillefloren who retained same.

That in the presence of Ted Ehler and Roy F. Farmer said Lillefloren said, "What am I supposed to do with this?" Ted Ehler said to said Lillefloren, "I suggest you read it through very carefully." Said Lillefloren then said, "This is just a piece of paper to me—I am going to wipe my ass with it."

Ted E. Ehler, Roy F. Farmer.

[fol 106] Subscribed and sworn to by Ted Ehler and Roy F. Farmer and each of them before me this 5th day of June, 1946. Mae Daly, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Endorsed: Received copy of the within affidavit this 5th day of June, 1946. John C. Stevenson, by Ray Uglow, attorney for certain defendants.

[File endorsement omitted.]

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[fol. 107] In Superior Court of Los Angeles County

Joint Affidavits of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull in Support of Plaintiff's Application for the Alleged Contempt of G. (Gay) Lillefloren —Filed June 7, 1946

State of California,
County of Los Angeles, ss:

Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, and each of them, being first separately sworn, now each of them deposes and says: That each of the affiants are male citizens of the United States, over and above the age of 21 years of age, residing in the County of Los Angeles, State of California;

That on the 4th day of June, 1946, Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull appeared with a large truck belonging to the plaintiff at the office of General Steamship Corporation, Pier 230, Wilmington, Los Angeles County, California, at about the hour of 10:30 A. M. That at said time there was on said Pier 230 1500 sacks or bags of green coffee, the property of Farmer Bros. Co., the plain-

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tiff, and to which they were then entitled. That there was then presented to General Steamship Corporation at said place the billing for said goods and demand was made for same. That a Mr. Bell, chief delivery clerk for General Steamship Corporation, stated that delivery could be made at a certain doorway on said pier, opposite and in the immediate vicinity of where said coffee was stacked. That the said door was opened, giving access directly onto the loading platform and the truck of Farmers Bros. Co. was present for the purpose of loading the coffee thereon.

[fol. 108] That thereupon one John Doe Baugh, whose full name is unknown, approached said Mr. Bell and stated: "Farmer Bros. are on the unfair list and you are notified not to handle their stuff." Bell then consulted Harry Rease, the dock superintendent of General Steamship Corporation at said place and Harry Rease stated in the presence of affiants that he, Rease, saw no reason why Farmers Bros. could not take said 1500 sacks of coffee from the dock, saying, in fact, "We have no right to prevent Farmer Bros. from taking their own property." That Rupert B. Turnbull then served a copy of the temporary restraining order issued in this case by the Honorable Judge Willis, by delivering to and leaving with said John Doe Baugh a copy thereof.

That thereupon there appeared the defendant herein, G. (Gay) Lillefloren, who presented to Harry Rease, the dock superintendent, and to Rupert B. Turnbull and each of them, his business card, reading: "G. (Gay) Lillefloren Representative WHlse. Delivery Drivers & Salesmen's Union Local 848 Phone DRexel 7061 Affiliated with A. F. of L. 846 South Union Avenue Room 7 Los Angeles, 14, Calif." That said Lillefloren then stated to said Bell and to Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull: "If you attempt to take this coffee we will throw a picket line around this dock right now. Do you want it done that way?" That thereupon said John Doe Baugh and another person whose name is unknown to affiant, reached into their respective pockets and took therefrom white cloth brassards and placed them respectively on their right arms, to-wit: one on the arm of John Doe Baugh and one on the arm of said unknown person, which brassards or arm-bands and each of them read, in large black letters: [fol. 109] "A F of L Picket." That said two persons

wearing such picket arm bands stood at the entrance door of said dock and together with the defendant G. (Gay) Lillefloren, and said G. (Gay) Lillefloren stated to the said Mr. Bell that he, the said Bell, as a union checker, could not cross that picket line nor check the goods nor permit the delivery thereof to Farmer Bros. Company.

That thereupon Rupert B. Turnbull requested of and from the dock superintendent, Harry Rease, the right to load said 1500 sacks of coffee without the use of the checker or any other person other than Ray C. Turnbull, Foy F. Farmer and himself. That said Harry Rease, the said dock superintendent, then stated that in view of the situation as it then existed, he would have to and did refuse to deliver the coffee to Farmer Bros. or to its then representatives at the dock and that he did then refuse to permit Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull to themselves load it off the dock onto the truck of Farmer Brothers Company. That during said times the said picket line consisting of John Doe Baugh, G. (Gay) Lillefloren and the un-named picket, maintained their position across the loading door.

That Rupert B. Turnbull then asked John Doe Baugh for his full name and asked the unknown picket for his name, whereupon the defendant Lillefloren stated: "You do not have to tell them your names. If anyone wants to know who stopped you fellows from taking this coffee, tell them I did." Rupert B. Turnbull thereupon attempted to serve defendant G. (Gay) Lillefloren with an additional copy of the temporary restraining order as issued by this court on the 22nd day of May, 1946, but said Lillefloren then stated: "I've had one of those—the big one with the blue cover. I've been here two weeks waiting to stop you [fol. 110] from getting that coffee and I've been getting tired sticking around here." Thereupon Rupert B. Turnbull said to defendant Lillefloren: "You keep on stopping us in this manner, you'll be in jail in the next two weeks," to which defendant Lillefloren replied: "So what? I stopped you, didn't I?"

That thereupon the truck of Farmers Brothers was moved from dock 232 to dock 230AB and Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull appeared at the Indies Terminal Company at berth or dock 230AB, Wilmington, California, at about 11:40 A. M. of June 4th, 1946.

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That at said dock and on the floor thereof there were at said time 769 bags of green coffee weighing 101,508 pounds, the then and present property of the plaintiff and to which plaintiff was then and is now entitled to possession. That the bills for said coffee were presented first to Jack Bork, chief delivery clerk of Indies Terminal Company, and then to Richard Murray, the assistant manager of said Indies Terminal Company. That said last named persons and each of them stated that Farmers Brothers could have delivery of said coffee at 1:00 P. M.; that it was necessary to get a checker on the job; that as this was election day the checker would charge time and a half or $2.31 an hour, which charge Farmer Brothers, through its then representative, Rupert B. Turnbull, then and there offered to pay. That at 1:00 P. M. of the same day of June 4, 1946, Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull again appeared at said dock or berth 230 AB and requested said coffee. That the plaintiff had at said dock at said time a large van type truck to take delivery of said coffee. That at said 1:00 P. M. a Frank Morrison appeared and stated he was the checker who would check the coffee off of the dock [fol. 111] to Farmer Brothers. That thereupon the defendant, G. (Gay) Lillefloren, appeared at said place together with John Doe Baugh and the same unidentified picket who had acted on the same day previous thereto at the dock of the General Steamship Corporation. That defendant Lillefloren then stated to Frank Morrison, "We have established a picket line here," referring to John Doe Baugh, himself, and the unidentified picket, "and you are not to cross it nor to permit Farmers Brothers to take any coffee nor to check any coffee to them." That said Frank Morrison then stated to Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull that there was nothing personal in the matter; that he wanted the work but that he was "on the spot." The said Frank Morrison then accompanied Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull into the inner business office of Indies Terminal Company and at that place both Jack Bork, the chief delivery clerk, and Richard Murray, the assistant manager of Indies Terminal Company, stated to said Frank Morrison that they desired to deliver the coffee to the plaintiff; that the plaintiff was there with a truck to take it. That thereupon and before Frank Morrison replied, the defendant Lillefloren came

into said inner office and stated: "We have a picket line out there right now and we will keep it there 24 hours a day. You are not to cross it nor to permit this merchandise to go off this dock." That said Frank Morrison then stated he would not check the merchandise to plaintiff nor would he cross said picket line. That Roy Farmer then stated in the presence of all of said persons mentioned other than John Doe Baugh and the unidentified picket, "Do you say, Gay, that you now have a picket line, that those men out there are picketing this place so that we can't get our [fol. 112] coffee? To which the defendant Lillefloren replied, "Yes, we have a picket line right here and right now and you can't have your coffee." That Rupert B. Turnbull then stated in the presence of the persons last above named and each of them, directing his statement to Jack Bork and Richard Mu~ray, "Can we take delivery off the dock ourselves without the checker?" We have a truck here at the door and we can load it ourselves." To which the said Jack Bork, chief delivery clerk, and Richard Murray, the assistant manager, both of Indies Terminal Company, stated that they could not permit the material to be taken off the dock under the circumstances; that they could not afford to have a picket line maintained at their dock when they had no controversy of their own with the unions; that therefore they could not either deliver or permit delivery of the coffee to the plaintiff. That said truck of Farmer Brothers was then driven away and said Ray C. Turnbull, Roy F. Farmer and Rupert E. Turnbull departed from said dock. That at the time they left, which was about 1:45 P. M. on June 4, 1946, the said picket line as aforesaid was still existing at and across the main entrance to the said pier of Indies Terminal Company.

That the said coffee on the dock of the General Steamship Corporation at berth 232, Wilmington, and the coffee at the dock 230-AB of the Indies Terminal Company was not removed therefrom.

That at all of the times hereinbefore set forth, no strike existed between the plaintiff and its employees or any of them and no person was out on strike. That at all the times [fol. 113] herein mentioned no labor controversy existed between Indies Terminal Company and its employees and no labor dispute or strike existed between General Steamship Corporation and any of its employees.

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Affiants and each of them allege that but for the acts of the said defendant G. (Gay) Lillefloren, the plaintiff would have been able to obtain delivery of its merchandise on June 4, 1946, to-wit: 1500 bags of coffee at berth 232 aforesaid and 769 bags of coffee at Indies Terminal Company dock.

Ray C. Turnbull, Roy F. Farmer, Rupert B. Turnbull.

Subscribed and sworn to before me by Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, and each of them, this 5th day of June, 1946. Mae Daly, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Endorsed: Received copy of the within affidavit this 5th day of June, 1946. John C. Stevenson, by Rae Uglow, attorney for certain defendants.

[File endorsement omitted.]

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[fol. 114] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVIT FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE OF ROY F. FARMER—Filed June 7, 1946

Contempt of Gay Lillefloren and Syl Sylvane

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Roy F. Farmer, being first duly sworn, upon oath deposes and says:

Count One

I

That affiant is President of Farmer Bros. Co., a corporation, plaintiff in the above entitled action, and affiant hereby refers to the complaint on file herein and by such reference makes it a part hereof as fully as if set forth herein in detail. That said complaint was filed in the above entitled court on or about May 21, 1946.

II

That subsequent to the filing of the complaint in the above entitled action, a temporary restraining order and order to show cause was issued out of the above entitled court on May 22, 1946; that thereafter, and subsequent to the filing of said complaint and the issuance of said temporary restraining order and order to show cause, the defendant Gay Lillefloren, who was and is business agent of Wholesale Drivers and Salesmen's Union, Local No. 848, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with AFL, was served on May 24, 1946, with a copy of the [fol. 115] complaint, a copy of the summons, a copy of the order to show cause, a copy of the temporary restraining order, a copy of the plaintiff's points and authorities, and a affidavits of Ted Ehler, Louis M. Clemens, Tony Sinozich and a copy of an additional affidavit of Ted Ehler, dated May 22, 1946.

Affiant states that the said Gay Lillefloren has at all times since said date of service been fully familiar with the contents of said complaint, the affidavits referred to, the order to show cause and the temporary restraining order.

The temporary restraining order, duly issued by the Honorable Henry M. Willis, Judge of the above entitled court, on or about May 22, 1946, as more fully appears from the files and records in this matter, is hereby referred to and made a part hereof as fully as if set forth herein in detail, and the said temporary restraining order provided, among other things, as follows:

"It Is Hereby Ordered that defendants, and each of them, be and appear before the above named Court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant association, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending

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final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such [fol. 116] persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts.

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

"(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

"(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when [fol. 117] the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined."

III

That the said defendant Gay Lillefloren has had actual knowledge of the issuance of said temporary restraining

order and of all of its terms, since its issuance, and at all times since the 24th day of May, 1946.

IV

That commencing on or about May 24, 1946, and continuing and including June 6, 1946, and in violation of said order of this court dated May 22, 1946, signed by the Honorable Henry M. Willis, Judge of the Superior Court of the State of California, entitled "Temporary Restraining Order," the said defendants Gay Lillefloren and Syl Sylvane, and certain other members of said defendant unions, to wit: Wholesale Delivery Drivers and Salesmen's Union Local No. 848, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with AFL, and certain members of the Wholesale Delivery Drivers and Salesmen's Union Local No. 595 and Grocery Warehousemen's Local No. 595, affiliated with the AFL, the names of said members being at present unknown to affiant, have unlawfully, knowingly and willfully combined and agreed and conspired to cause employees of Western Truck Lines, Ltd., a corporation, and the Indies Terminal Company, suppliers and carriers of plaintiff, and numerous other suppliers, customers and carriers of the plaintiff Farmer Bros. Co., not herein specifically named, to cease performing services for any of said employers in this paragraph above named, and for the other [fol. 118] employers who are suppliers, customers and carriers of plaintiff, all of whom are employers, whether named herein or not, who have had any dealings with the plaintiff.

And the said Gay Lillefloren and Syl Sylvane and such other persons willfully combined, confederated, conspired and agreed together, and with one another, to cause, threaten to cause, and to compel such employees of said employers, who are customers, suppliers and carriers of plaintiff, to cease performing services for said employers and to prevent said employers from doing any business with plaintiff and from purchasing any supplies from plaintiff or carrying or shipping any merchandise to or from Farmer Bros. Co.

V

That in connection with said combination and agreement to cease performing services for such concerns hereinabove named, the said Gay Lillefloren, together with other per-

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sons whose true names are unknown to affiant, on June 4, 1946, called at the office of General Steamship Company, Pier 230, Wilmington, Los Angeles County, California, at about the hour of 10:30 A. M. That at that time on said pier there were about 1500 bags of green coffee, the property of plaintiff and to which Farmer Bros. Co. was then and there entitled. That at said time and place the plaintiff had caused a large truck belonging to plaintiff to go to said pier to pick up said 1500 bags of coffee. There were present on said truck the said Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull. A proper bill of lading was presented to the said steamship company and demand for the 1500 bags of coffee was made. Mr. Bell, Chief Delivery Clerk for the General Steamship Company, then stated that [fol. 119] delivery could and would be made at once at a certain doorway in the vicinity of the place where the coffee was stored. The door was opened by a representative of the said steamship company and the plaintiff's truck was placed in a position to receive the coffee. Thereupon, the defendant Gay Lillefloren and a man by the name of Baugh, whose first name is unknown to affiant but who, affiant is informed and upon such information alleges, is a representative of the said union and working with said defendant Gay Lillefloren, appeared and stated to said representative of the General Steamship Company:

"Farmer Bros. is on the unfair list and you are notified not to handle their stuff."

The representative of the said steamship company then replied:

"We have no right to prevent Farmer Bros. from taking their own property."

A copy of the temporary injunction issued in this case by Hon. Henry M. Willis on May 22, 1946, was then and there served on the said defendant John Doe Baugh. Thereupon the defendant Gay Lillefloren stated to those present, including employees of General Steamship Company:

"I am Gay Lillefloren, representing Wholesale Delivery Drivers and Salesmen's Union, Local 848."

He then handed his card to a representative of the steamship company and said to the persons present, including

Ray C. Turnbull, Roy F. Farmer, Rupert B. Turnbull, and a representative of the steamship company:

"If you attempt to take this coffee, we will throw a picket line around this dock now."

[fol. 120] Then the said Baugh reached in his pocket and put a picket sign on his arm, which said in large black letters: "A F of L Picket" and another man with Baugh also placed a similar sign on his arm and they stood by the door of the warehouse. The defendant Gay Lillefloren then stated to a union checker in the plant, who was about to check out the coffee:

"You can't pass this picket line. You cannot check these sacks of coffee or permit delivery of it to Farmer Bros. Co."

Thereupon the said Rupert B. Turnbull requested the dock superintendent, Harry Rease, for permission to load the 1500 bags of coffee without the use of the checker or any employee of General Steamship Company, stating that he and his son and Roy F. Farmer would load it on the truck. Thereupon an employee of said steamship company stated:

"We will have to refuse to deliver this coffee to Farmer Bros. Co."

Thereupon he did refuse to deliver said coffee to plaintiff.

During all of these conversations the said Gay Lillefloren, John Doe Baugh, and the picket whose name is unknown to affiant, all connected with said defendant unions, stood blocking the loading door. Thereupon, Rupert B. Turnbull asked the said Baugh what his full name was and the defendant Gay Lillefloren spoke up and said:

"You don't have to tell them your names. If anyone asks you who stopped you from taking this coffee, tell them I did."

[fol. 121] At that time the said Rupert B. Turnbull handed to said Gay Lillefloren a copy of the temporary restraining order signed May 22, 1946, notwithstanding the fact that said Lillefloren had been previously served with the same and the defendant Lillefloren then said:

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"I have had one of those served on me—the big one with the blue cover. I have been here two weeks waiting to stop you from getting this coffee and I'm tired sticking around here."

Thereupon the said Rupert B. Turnbull stated to the defendant Lillefloren:

"You keep on stopping us from getting out coffee and you'll be in jail,"

to which defendant Lillefloren replied:

"So what? I stopped you, didn't I?"

VI

That there is on file in this action a joint affidavit of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, dated June 5, 1946, which affidavit is hereby referred to and by such reference is made a part hereof as fully as if set forth herein in detail.

VII

That the defendant Syl Sylvane was served with a copy of the temporary restraining Order issued by the Hon. Henry M. Willis on May 22, 1946, together with a copy of the summons, complaint, points and authorities and supporting affidavits, in Los Angeles, California, on May 24, 1946.

[fol. 122] VIII

That at all times herein mentioned it has been in the power of the said defendant-respondents Gay Lillefloren and Syl Sylvane to terminate said picket lines, activities, combinations and threats herein complained of.

IX

That at all times herein mentioned and specifically on June 5, 1946, the defendants Syl Sylvane and Gay Lillefloren, at the plant of the General Steamship Company, well knew of the terms and conditions of the said temporary restraining order but, notwithstanding said knowledge on their part and on the part of each of them, and in furtherance of said combination and agreement, they did unlawfully, knowingly and willfully violate the pro-

visions of the said temporary restraining order issued on May 22, 1946, by the Hon. Henry M. Willis, Judge of the Superior Court, as aforesaid.

X

That on May 24, 1946, at 39th and Main Streets, Los Angeles, California, the defendant-respondent Gay Lillefloren was served with a complete and true copy of the complaint, summons, temporary restraining order dated May 22, 1946, signed by Judge Willis, the order to show cause, points and authorities and affidavits, by Roy C. Farmer, an agent of plaintiff, and in the presence of Ted Ehler and, after having been served, the said defendant-respondent, Gay Lillefloren, said to the said Roy F. Farmer and Ted Ehler:

"What am I supposed to do with this?"

Thereupon the said Ted Ehler stated to the said Gay Lillefloren:

"I suggest you read it through very carefully."

Thereupon the said Gay Lillefloren then replied:

"This is just a piece of paper to me—I am going to wipe my ass with it."

That there is on file herein an affidavit signed by Ted Ehler and Roy F. Farmer, dated June 5, 1946, in support of this allegation, to which affidavit this affiant respectfully refers and by said reference makes the same a part hereof as fully as if set forth herein in detail.

Second Count

I

Affiant and petitioner hereby refers to the allegations contained in paragraphs I to X of said first count, inclusive, and hereby makes said allegations, and each of them, a part hereof as fully as if said allegations, and each thereof, were herein repeated in detail.

II

That on or about May 24, 1946, Gay Lillefloren and Syl Sylvane, defendants in the above entitled action, were both served in Los Angeles County, California, with copies of the restraining order hereinabove referred to, the sum-

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mons, a copy of the complaint, points and authorities and affidavits in this matter and each of said defendants, ever since May 24, 1946, has been fully aware of the contents of said restraining order and of the complaint and affidavits in this matter.

[fol. 124] III

That on or about June 4, 1946, Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull drove a truck belongin*f* to plaintiff to the warehouse of the Indies Terminal Company at Terminal Island, California, for the purpose of obtaining from said Indies Terminal Company at dock 230AB, Wilmington, *Delaware,* 769 bags of green coffee weighing 101,508 pounds, which coffee then belonged and now belongs to Farmer Bros. Co., is its property to which said plaintiff was then and is now entitled to possession. That when the representatives of the plaintiff reached the dock of the Indies Terminal Company, they presented to a representative of the Indies Terminal Company, namely, Richard Murray, bills of lading for said coffee. That said representative of said company then stated that said Farmer Bros. Co. could have delivery of its coffee at 1 P. M.; that it would be necessary to pay a checker overtime because it was election day, which charge said representatives of plaintiff stated they would pay. At 1 P. M. on June 4, 1946, said Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull together, and with a truck belonging to Farmer Bros. Co., appeared at said dock and requested delivery of said coffee. Thereupon a checker named Frank Morrison stated he would check the coffee off of the dock to Farmer Bros. Co.

Thereupon the defendant Gay Lillefloren appeared at the dock with a person known to affiant only as John Doe Baugh, the same person who had been at the dock of the General Steamship Company with said Gay Lillefloren in connection with the matters hereinbefore related in count I.

Thereupon the said defendant Gay Lillefloren stated to the checker who was about to check the coffee to Farmer Bros. Co.'s truck and to its agents:

[fol. 125] "We have established a picket line here" and then pointed to Baugh, himself, and another person unknown to affiant. He then said:

"And you are not to cross it, nor to permit Farmer Bros. Co. to take any coffee, nor to check any coffee to them."

Thereupon the said checker said: "I am on the spot."

Thereupon Rupert B. Turnbull, Roy F. Farmer and Ray C. Turnbull went in to the business office of the Indies Terminal Company and talked with one Jack Bork, Chief Delivery Clerk, and Richard Murray, Assistant Manager of Indies Terminal Company, and said agents of Farmer Bros. Co. stated:

"We are here with our truck and want the coffee, which is ours."

Thereupon the defendant Gay Lillefloren, who had come into the office, said:

"We have a picket line out there now and we will keep it here 24 hours a day. You are not going to cross it and we are not going to permit this merchandise to go off the dock."

Thereupon a representative of Farmer Bros. Co. stated:

"Can we take delivery of the coffee ourselves and take it off the dock? We have a truck here at the door and we can load it ourselves."

Thereupon said Jack Bork, Chief Delivery Clerk, and the said Richard Murray, Assistant Manager, of the Indies Terminal Company, stated to Rupert B. Turnbull, Ray C. Turnbull and Roy F. Farmer, agents of Farmer Bros. Co., that they were "afraid of what would happen [fol. 126] if they delivered the coffee. There would be a picket line at their place; their docks would be picketed and tied up, and so they couldn't let Farmer Bros. Co. have its coffee. That as Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull departed from the said building, the said Gay Lillefloren and John Doe Baugh and another picket were picketing the place of business of Indies Terminal Company, marching up and down with a sign which read:

"Unfair to Teamsters Union."

That as a result of said activities on the part of said defendants, plaintiff was unable to obtain its said coffee.

That at all times herein mentioned there was no labor dispute between the unions involved herein and the Indies Terminal Company and that but for the acts of the de-

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fendant Lillefloren and the other pickets plaintiffs Farmer Bros. Co. could have obtained delivery of its coffee.

### Third Count

### I

Affiant and petitioner hereby refers to the allegations contained in paragraphs I to X of said first count, inclusive, and hereby makes said allegations and each thereof a part hereof as fully as if said allegations and each thereof were herein repeated in detail.

### II

That on June 6, 1946, Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, acting as agents of Farmer Bros. Co., plaintiff herein, drove a truck belonging to plaintiff to the dock of the Outer Harbor Dock & Wharf Company at Berths 41-55, San Pedro, Los Angeles County, California; that at the Outer Harbor Dock & Wharf Com- [fol. 127] pany there were 150 sacks of Colombia coffee, which coffee was the property of plaintiff and to which coffee Farmer Bros. Co. was then and now is entitled to possession; that at the Outer Harbor Dock & Wharf Company the said agents of Farmer Bros. Co. presented their bill of lading to the Outer Harbor Dock & Wharf Company and were told by an agent of said company, to wit, one William Glassey, that they could back up their truck to the door and that they could get the coffee themselves; that thereupon the said truck was placed in position to receive the coffee and the said Rupert B. Turnbull, Roy F. Farmer and Ray C. Turnbull backed up their truck and started loading coffee from the warehouse into the truck of plaintiff; that there was standing nearby a picket by the name of John Boyd Rogers, who immediately ran to a telephone booth and placed a 'phone call. Shortly thereafter the defendant Gay Lillefloren appeared and as he appeared the said Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull were actually stacking coffee in the truck of Farmer Bros. Co. and had already loaded a portion of the coffee from the warehouse floor into the truck itself.

The defendant Lillefloren rushed out of the warehouse and then returned with a man known as O. M. Ebersole. Thereupon O. M. Ebersole and Gay Lillefloren said:

"What do you mean taking this coffee without a checker?

"This is a picket line. We are picketing this place. Don't you move this coffee. Don't you dare move this coffee."

And thereupon Lillefloren and Ebersole stated to the employees of Outer Harbor Dock & Wharf Company:

[fol. 128] "Don't you dare move this coffee. Don't you go through this picket line."

Thereupon the dock superintendent named William Forbes came up and was told by the agents of plaintiff in the presence of the defendant Lillefloren:

"We have our truck here. This is our coffee. We will load it ourselves."

Thereupon the defendant Lillefloren said:

"You will not load it. We have watched you and we have watched this coffee for two weeks, and if you dare to get this coffee out of here, I'll send for more men and I'll picket this entire dock. I intend to stop you from moving that coffee."

Thereupon the said defendant Lillefloren ran inside of Farmer Bros. Co.'s truck and threw out of it the bags of coffee that had been placed there by the plaintiff's agents.

Fourth Count

I

Affiant and petitioner hereby refers to the allegations contained in paragraphs I to X of said first count, inclusive, and hereby makes such allegations, and each thereof, a part hereof as fully as if said allegations, and each thereof, were herein repeated in detail.

II

That on June 6, 1946, Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, as agents of the plaintiff Farmer

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Bros. Co., drove a truck to the dock of the Indies Terminal Company, Berth 230AB, at which terminal the plaintiff had 769 bags of coffee, of which coffee plaintiff was the owner, and entitled to possession thereof. Thereupon the [fol. 129] agent of said Indies Terminal Company informed said representatives of plaintiff just hereinabove named that if they would back their truck up to door 19, the door would be opened for them and the coffee could then be loaded into the plaintiff's truck. The door at No. 19 was then opened; Farmer Bros. Co.'s truck was backed up to the door and the defendant-respondent Syl Sylvane appeared and said to the employees of Indies Terminal Company and to the said representatives of plaintiff:

"This is a picket line. We are picketing for the Teamsters Union,"

and said Syl Sylvane thereupon spoke to one Henry Ambrosi, an employee of the Indies Terminal Company, and said:

"This is a picket line. You can't deliver coffee to these people. Farmer Bros. Co. cannot get any coffee out of this warehouse."

Thereupon another employee of the Indies Terminal Company, Ralph Bennett, Manager, appeared and, in the presence of the *defendant*-respondents Syl Sylvane and Gay Lillefloren, the agents of plaintiff, namely, Roy F. Farmer, Ray C. Turnbull and Rupert B. Turnbull, said to Lillefloren and Sylvane:

"This is Farmer Bros. Co.'s coffee. We want it. We will take it ourselves."

Thereupon the defendant Lillefloren said:

"Well, we meet again. And you are not going to get the coffee. We will not let you."

[fol. 130] Thereupon the defendant-respondent Syl Sylvane left the dock and immediately came back with a picket who was carrying a sign which said upon it:

"Unfair to Teamsters Union A. F. of L. No. 595."

Affiant and petitioner alleges that all of the acts and things in this count complained of were done willfully, unlawfully, deliberately, and in violation of the said temporary restraining order issued on May 22, 1946. That as

a result of the activities in this count hereinbefore set forth said Farmer Bros. Co. was unable to obtain its said coffee.

Conclusion

Affiant and petitioner alleges that each and all of the acts of the said Gay Lillefloren and Syl Sylvane, hereinabove complained of in counts one to four, inclusive, of this affidavit and petition, and in each of said counts, constitute contempt of this court.

Wherefore, your affiant prays that the above entitled court issue an order to said Gay Lillefloren and to said Syl Sylvane to show cause, if any there be, why they and each of them should not be adjudged guilty of contempt of court as to each of the counts set forth in the foregoing affidavit and punished therefor by reason of the acts and allegations hereinabove referred to and set forth.

Roy Farmer, Affiant and Petitioner.

[fol. 131] Subscribed and sworn to before me this 6th day of June, 1946. Ray O'Brien, Notary Public in and for Said County and State. (Seal.)

Rupert B. Turnbull and Russell E. Parsons, by Russell E. Parsons, Attorneys for Affiant-Petitioner.

Points and Authorities

Contempt of court, Sections 1209, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, C. C. P.
See:

McK. Dig., Contempt, 41, 63, etc., *et seq.;*
3 Cal. Jur. 929, 938.

Verified.

[File endorsement omitted.]

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[fol. 132] IN SUPERIOR COURT OF LOS ANGELES COUNTY

ORDER TO SHOW CAUSE WHY GAY LILLEFLOREN AND SYL SYLVANE SHOULD NOT BE PUNISHED FOR CONTEMPT OF COURT—Filed June 7, 1946

The People of the State of California to Gay Lillefloren and Syl Sylvane, Greetings:

On reading and filing the affidavit of Roy Farmer and supporting affidavits, charging Gay Lillefloren and Syl Sylvane with contempt of this court, and sufficient cause appearing therefor:

It is ordered that the said Gay Lillefloren and Syl Sylvane be and appear before this court in open court at the court room thereof, in Dept. 34 on the 20th floor of City Hall at Los Angeles, California, on the 21 day of June, 1946, at the hour of 9:35 A. M., to show cause why they and each of them should not be punished for contempt as in said affidavit charged and alleged.

[It is further ordered that time within which this order to show cause may be heard be and it is hereby shortened, and]* [W., J.]

It is hereby ordered that a copy of said affidavit of and supporting affidavits on file [W., J.]
Roy Farmer ^ and of this order be served on the said Gay Lillefloren and Syl Sylvane on or before the 15th day of June, 1946.

Dated at Los Angeles, this 7th day of June, 1946.

Willis, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 133] AFFIDAVIT OF SERVICE OF RAY O'BRIEN

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ray O'Brien, being sworn, says: I am and was on the date herein mentioned over the age of eighteen years and not a party to this action; I served the affidavit of contempt and order to show cause in this action by personally delivering to and leaving with the following persons at the County

* Matter struck out in copy.

of Los Angeles, on the dates set opposite their respective names, a true copy thereof, to-wit:

Syl Sylvane, Berth 230, Indies Terminal Company, Terminal Island, Wilmington, California — June 13,1946.

Gay Lillefloren, Berth 232, Terminal Island, Wilmington, California — June 13, 1946.

Ray O'Brien.

Subscribed and sworn to before me this 20 day of June, 1946. Loris V. Cady, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Endorsed: Filed Jun. 21, 1946. J. F. Moroney, county clerk; by J. E. Shaw, deputy.

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[fols. 134-135] In Superior Court of Los Angeles County

Order to Show Cause Why Homer Ford, Russell Marks and Irv Magisen Should Not Be Punished for Contempt of Court—June 21, 1946

The People of the State of California to Homer Ford, Russell Marks and Irv Magisen, Greetings:

On reading and filing the affidavit of Roy Farmer, charging Homer Ford, Russell Marks and Irv Magisen with contempt of this court, and sufficient cause appearing therefor:

It is ordered that the said Homer Ford, Russell Marks and Irv Magisen be and appear before this court in open court at the court room thereof, in Department 34 on the 20th floor of the City Hall at Los Angeles, California, on the 12th July day of [June],* 1946, at the hour of 9:30 A. M., to show cause why they and each of them should not be punished for contempt as in said affidavit charged and alleged.

It is further ordered that a copy of said affidavit of Roy Farmer and of this order be served on the said Homer Ford, Russell Marks and Irv Magisen on or before the 29 day of June, 1946.

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* Matter inclosed in brackets struck out in copy.

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Dated at Los Angeles, California, this 21 day of June, 1946.

Willis, Judge of the Superior Court.

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[fol. 136] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVIT FOR CONTEMPT AND PETITION FOR ORDER TO SHOW CAUSE OF ROY FARMER

CONTEMPT OF HOMER FORD, RUSSELL MARKS AND IRV MAGISEN —Filed June 21, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Roy Farmer, being first duly sworn, upon oath deposes and says:

First Count

I

That affiant is president of Farmer Bros. Co., a corporation, the plaintiff herein. Affiant hereby refers to the com-[fol. 137] plaint on file and by such reference makes it a part hereof as if fully set forth herein in detail. The complaint in this action was filed on May 21, 1946.

II

That after the filing of the complaint in this action, a temporary restraining order and order to show cause was issued out of the above entitled court on May 22, 1946, and thereafter was continued in force from time to time by the court by its orders, and said restraining order was in full force at all of the times mentioned in this affidavit and petition for contempt. That after the issuance and signing of said temporary restraining order on May 22, 1946, a copy thereof was served upon each of the respondents herein: Homer Ford, Russell Marks and Irv Magisen, and a copy of said restraining order was left with each of said respondents and they, and each of them, retained the same. That said service of the said restraining order was made on May 23, 1946, on Russell Marks May 24, 1946, and on Irv Magisen on May 22, 1946. That at the time said

respondents and each of them last named were served with said temporary restraining order, they were also served with, and there was left with them, and each of them, a copy of the complaint, copy of the summons, copy of the order to show cause, a copy of plaintiff's points and authorities, and copies of the affidavits of Ted Ehler, Louis M. Clemens and Tony Sinozich, and a copy of the additional affidavit of Ted Ehler.

That at all of the times mentioned in this affidavit and petition, Homer Ford, Russell Marks and Irv Magisen, and each of them, were business agents and business representatives of the defendant unions in this action and they, and each of them, were acting in a supervisory capacity for said [fol. 138] defendant unions during the times mentioned in this affidavit and petition.

III

Affiant states that the respondents Homer Ford, Russell Marks and Irv Magisen, and each of them, were fully familiar with the contents of the complaint, the affidavits, the order to show cause and the temporary restraining order herein, at all the times herein mentioned.

That said temporary restraining order referred to herein was duly issued by this court by the Hon. Henry M. Willis, Judge, on or about May 22, 1946, as more fully appears from the files and records in this matter, which files are hereby referred to and made a part hereof; said temporary restraining order provided, among other things, as follows:

"It Is Hereby Ordered that defendants, and each of them, be and appear before the above named Court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this order, defendants and each of them, and all such

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persons are, and each of them is, hereby restrained and [fol. 139] commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

"(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

"(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of [fol. 140] carrying out any combination or agreement herein restrained or enjoined."

## IV

That commencing on or about May 24, 1946, and continuing to and including June 14, 1946, and in violation of said order of this court, dated May 22, 1946, as issued and signed by said Hon. Henry M. Willis, Judge, the said defendants Homer Ford, Russell Marks and Irv Magisen, and each of them, and certain other members of the defendant unions,

particularly Gay Lillefloren and Syl Sylvane, have unlawfully, knowingly and willfully combined and agreed and conspired to cause employees of General Steamship Corporation, Ltd., a corporation, and Indies Terminal Company, a corporation, to cease performing services for said employers. That on June 13, 1946, the plaintiff Farmer Bros. Co. was the owner of, and entitled to possession of, 1499 bags or sacks of green coffee, said sacks or bags containing approximately 155 pounds each of green coffee, which coffee was then upon the dock known as Berth 232, Terminal Island, Wilmington, California, which dock or berth is operated by and controlled by General Steamship Corporation, Ltd. That at the same time, plaintiff Farmer Bros. Co. was the owner of and entitled to the possession of 769 bags or sacks of green coffee, said bags or sacks each containing approximately 155 pounds of green coffee, said 769 bags of coffee being upon the dock of Indies Terminal Company, known as Berth 230, Terminal Island, Wilmington, California. That prior to June 13, 1946, the plaintiff had attempted to obtain peaceful possession of said coffee and all thereof, as aforesaid, but the defendants Gay Lillefloren, Syl Sylvane, Homer Ford, Russell Marks and Irv Magisen had prevented the plaintiff from taking possession thereof by threatening to throw a picket line around both of said [fol. 141] docks or berths as aforesaid; and, as a result of said threats of said defendants, General Steamship Corporation, Ltd., and Indies Terminal Company, and each of them, had wrongfully refused either to deliver said coffee or to permit the plaintiff, by its own workmen with its own trucks, to remove said coffee, or any portion thereof, from said docks.

V

That on June 12, 1946, the plaintiff Farmer Bros. Co. filed in this court a civil action entitled "Farmer Bros. Co., a corporation, plaintiff, vs. General Steamship Corporation, Ltd., defendant, which action was an action for the claim and delivery of the 1499 sacks or bags of coffee then upon the pier or dock or berth of the General Steamship Corporation, Ltd., Berth 232, Terminal Island, Wilmington, California. That at the same time the plaintiff filed in this court a civil action in which Farmer Bros. Co., the plaintiff herein, was plaintiff and the defendant in said action was Indies Terminal Company. That said last re-

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ferred to action was an action for the claim and delivery of the 769 bags of green coffee then upon Pier 230 of the Indies Terminal Company, at Terminal Island, Wilmington, California. That the processes in said actions, and each of them, were placed for service and execution in the hands of the Sheriff of Los Angeles County, California, and on June 13, 1946, the Sheriff of Los Angeles County, with the aid of twelve [fourteen]* (12) uniformed deputy sheriffs, attempted to execute said process, to wit, to seize and take the 1499 bags of coffee from the dock of general Steamship Corporation, Ltd., at Wilmington, California. That the Sheriff, in seizing said coffee aforesaid under the process of this court, re- [fol. 142] quested the aid of the plaintiff in supplying a working crew of eighteen (18) men to load and unload said coffee and the supplying of eight (8) trucks for the purpose of transporting the same from the dock of General Steamship Corporation, Ltd. That the plaintiff, pursuant to such request, furnished 18 workmen and 8 trucks. That the said workmen and the said eight trucks, and 12 deputy sheriffs, appeared at about the hour of 8:30 A. M. on the morning of June 13, 1946, at and upon Berth 232, Terminal Island, Wilmington, California, said place being the place of business of General Steamship Corporation, Ltd., and the Sheriff of Los Angeles County, by his deputy sheriffs, proceeded to seize and did seize the 1499 bags of green coffee and attempted to load the same into the eight trucks which had been drawn up at the dock for such purpose. That at said time there appeared Homer Ford, Russell Marks and Irv Magisen, together with Gay Lillefloren and Syl Sylvane, all business representatives of the defendant unions. That Gay Lillefloren and Syl Sylvane, and each of them, had, prior to June 13, 1946, been served with a complete copy of the summons, complaint, temporary restraining order and order to show cause, and the affidavits in support thereof, and each was fully familiar, on June 13, 1946, of the conditions and terms of said temporary restraining order, and each of them knew that the same had been issued on May 22, 1946, by this court, and had been continued in force and effect, and that said restraining order was in full force and effect on June 13, 1946, and all thereof. That the defendants

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* Matter inclosed in brackets struck out in copy.

[fol. 143] Homer Ford, Russell Marks and Irv Magisen, together with Gay Lillefloren, directed other members of defendant unions, the names of whom are unknown to affiant, other than John Doe Baugh, who was one thereof, to form a picket line at said dock of the General Steamship Corporation, Ltd., at and in the immediate vicinity of said coffee and in front of the tail-end gates and openings of the trucks upon which the Sheriff was about to and did load the coffee in question. That said picket lines were formed and the pickets were directed by said defendants Homer Ford, Russell Marks, Irv Magisen and Gay Lillefloren to congregate immediately in front of the openings of said trucks so closely as to interfere with the loading thereof, in the manner and as is shown in "Exhibit X" which is attached to and made a part of this affidavit and petition. That said exhibit shows three of said pickets, with picket bands on the left arm of each picket, reading "Picket A. F. of L." That the defendants Homer Ford, Russell Marks and Irv Magisen then went to the superintendent of said General Steamship Corporation, Ltd.'s, dock 232 and stated to him and to the officials of said company, in this language or in substance, to wit:

"You will stop the Sheriff from taking this coffee off this dock right now, or we will picket the dock; we will call off all of the checkers whom you employ, who are checking goods to other customers, and we will call off the longshoremen who are unloading the ship here at the berth for you."

[fol. 144] That the said superintendent, Mr. Reece, stated to the said defendants, in substance or effect, as follows:

(Photostat)

"I can do nothing about it. We have been served with a copy of Judge Willis' injunction and, in addition, the Sheriff is taking the goods and I cannot resist him, as he has a court process for it."

That thereupon the said defendants Messrs. Ford, Marks and Magisen went to all of the employees of the General Steamship Corporation, Ltd., on Berth 232, to wit, all of the checkers who were then and there actively engaged in checking other merchandise to other shippers, both on and off the dock, also to all dock men engaged in handling merchandise on the dock other than that of plaintiff Farmer Bros. Co., also to the employees of General Steamship Cor-

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poration, Ltd., who were loading and unloading other merchandise to and from the dock, and also to the longshoremen who were unloading a ship on the water side of said dock or Berth 232 of said steamship company. That the said defendants Ford, Marks and Magisen then ordered all of said checkers, all of said longshoremen, and all of said dock workers, to cease working upon said dock and to cease handling any cargo, including the cargo of the said ship, merchandise on the dock belonging to persons other than Farmer Bros. Co., and ordered said checkers to cease checking merchandise of third parties to the dock or from the dock. That all of said checkers, all of said longshoremen, and all of said dock workers were then and there employees [fol. 145] of, working for compensation, and for said General Steamship Corporation, Ltd. That all of said longshoremen and all of said dock workers were then and there employees of, working for compensation, and for said General Steamship Corporation, Ltd. That all of said longshoremen, all of said checkers, and all of said dock workers, then ceased to work and did not work for a period of two and one-half hours. That said checkers, dock workers and longshoremen demanded and received compensation for said two and one-half hours work stoppage, such compensation for said period in which they refused to work at the request and demand of the respondents Ford, Marks and Magisen amounting to approximately $150.00. That on one occasion during the loading of said coffee from said dock to the trucks standing at said dock, to wit, during the loading of the said 1499 sacks of coffee, one of the pickets placed before the opening to one of the trucks bumped and jostled one of the workmen furnished to the Sheriff for the loading thereof, to wit, a workman who was about to drag five sacks of coffee on a hand truck into one of the waiting trucks. That all of the matters and things hereinbefore recited occurred in the presence of the defendants Homer Ford, Russell Marks and Irv Magisen, who were personally present on the dock in the immediate vicinity of said picket line and of said loading operations. That affiant, as president of the plaintiff, protested to said defendants Ford, Marks and Magisen respecting their conduct, threats and actions. That "Exhibit Y," attached hereto, is a photograph made on the scene at the time, and shows a portion of the picket line at the door or tail-end of one of the Sheriff's trucks, shows

the method of obstructing the loading of said coffee by the Sheriff; that the persons shown at the upper right hand [fol. 146] center of said photograph, "Exhibit Y," are affiant (with straw hat) talking to and protesting to said defendants Homer Ford, Russell Marks and Irv Magisen. That "Exhibit Z," attached hereto, is a photograph taken at the time and place hereinabove referred to and shows some of the pickets obstructing the entrance to one of the trucks being loaded, and particularly shows one of the pickets directly in front of one of the workmen attempting to load said truck.

VI

That at all of the times herein mentioned it has been in the power of the said defendant-respondents Homer Ford, Russell Marks and Irv Magisen, and each of them, to terminate said picket lines and activities, combinations and threats herein complained of.

(Photostats.)

VII

That at all of the times herein mentioned and specifically on June 13, 1946, the defendant-respondents Homer Ford, Russell Marks and Irv Magisen at the dock of the General Steamship Corporation, Ltd., Berth 232, Terminal Island, Wilmington, California, knew of the terms and conditions of the said temporary restraining order but, notwithstanding said knowledge on their part and on the part of each of them, and, in furtherance of said combination and agreement, they did unlawfully, knowingly and willfully violate the provisions of said temporary restraining order issued on May 22, 1946, by the Hon. Henry M. Willis, Judge of this court, as aforesaid.

[fol. 147] Second Count

I

Affiant and petitioner hereby refers to the allegations contained in paragraphs I to VII of the first count herein and hereby makes said allegations, and each of them, a part hereof as if fully set forth herein, and incorporates same as a part of this second count.

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II

That on June 13, 1946, at Terminal Island, Wilmington, California, at Berth 230, the plaintiff was the owner of 769 bags of green coffee, weighing 101,508 pounds, which coffee then was owned by the plaintiff and to which the plaintiff was then and there entitled to possession. That prior to June 13, 1946, plaintiff had attempted by peaceable means to take delivery of said coffee from said dock 230, which was the dock of the Indies Terminal Company, but that the said defendants herein, Homer Ford, Russell Marks and Irv Magisen, together with defendants Gay Lillefloren and Syl Sylvane, had threatened to throw a general picket line about said dock 230 and to prevent the loading and unloading of all ships and removal of all merchandise, irrespective of whether it was the property of plaintiff, or otherwise. That by reason of said threats Indies Terminal Company had refused to either deliver to the plaintiff or permit the plaintiff to take from its dock the said 769 bags of coffee, or any thereof. That on June 12, 1946, the plaintiff filed a civil action in this court, in which the plaintiff herein was plaintiff therein, and Indies Terminal Company was defendant therein, which action was for claim and delivery and seizure, under process of this court, from Indies Terminal Company, of plaintiff's 769 bags of green coffee. That on [fol. 148] June 13, 1946, the Sheriff of Los Angeles County, California, acting through twelve deputy sheriffs and acting under the process of this court in said last mentioned civil action, attempted to take and seize said 769 bags of green coffee from said Indies Terminal Company at Berth 230. That at said time and place the defendant-respondents Ford, Marks and Magisen, together with the defendants Gay Lillefloren and Syl Sylvane, all of whom had been previously served with copies of the restraining order of this court dated May 22, 1946, placed a picket line along the dock or berth of Indies Terminal Company at and in the immediate vicinity of said coffee; and said defendant-respondents, Ford, Magisen and Marks, demanded of and from the officers of the Indies Terminal Company that they prevent the Sheriff of Los Angeles County and his deputies from taking, seizing or moving said 769 bags of coffee from said Indies Terminal Company dock or berth 230, and stated to said officials of said Indies Terminal Company that, unless said officials did stop the Sheriff from taking

said material, to wit, said 769 bags of coffee, they would cause a picket line to be placed upon said dock which would prevent the loading or unloading of any merchandise from said dock 230, including the loading or unloading of any ships. That the said deputy sheriffs proceeded to take and did take said 769 bags of coffee which were then progressively loaded upon the trucks standing at said berth to take the same; but immediately prior to the loading of said coffee, and during the period it was being loaded, the defend-
[fol. 149] ant-respondents Ford, Marks and Magisen, together with the defendants Lillefloren and Sylvane, caused a picket line to be placed upon said dock, to wit, a line of men, each bearing upon his left arm the words: "Picket, A. F. of L.," and did maintain said pocket line at said place until all of said coffee had been taken by the Sheriff and removed from said pier.

III

Affiant and petitioner alleges that all of the acts and things in this account complained of were done willfully, unlawfully, deliberately and in violation of the said temporary restraining order issued on May 22, 1946.

IV

That at all of the times herein mentioned it has been and was in the power of the said defendant-respondents Ford, Marks and Magisen, and each of them, to terminate said picket lines, activities, combinations and threats herein complained of.

Conclusion

Affiant and petitioner alleges that each and all of the acts of said Homer Ford, Russell Marks and Irv Magisen, complained of in count one and count two hereof, inclusive, and in each of said counts, constitute contempt of this court.

Wherefore, your affiant and petitioner prays that the above entitled court issue an order directed to Homer Ford, Russell Marks and Irv Magisen to show cause, if any there be, why they and each of them should not be adjudged guilty
[fol. 150] of contempt of court as to each of the counts set forth in the foregoing affidavit and petition and punished therefor, by reason of the acts, threats, *by reason of the acts,*

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*threats* and allegations hereinabove referred to and set forth.

Roy Farmer, Affiant and Petitioner. S. M.

Subscribed and sworn to before me this 20th day of June, 1946. S. H. Redpath, Notary Public in and for Said County and State. (Seal.)

Points and Authorities

Contempt of court, Sections 1209, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, C. C. P.

See

McK. Dig., Contempt, 41, 63, etc., *et seq.*
3 Cal. Jur. 929, 938.

Verified.

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[fol. 151] In Superior Court of Los Angeles County

Demurrer of Defendant, L. L. Sylvaine, to Petition re Contempt—Filed June 21, 1946

Comes now L. L. Sylvaine, named herein as Syl Sylvane, and for himself alone, demurs to the petition for contempt on the following grounds:

I

That this court has no jurisdiction of the subject of this action.

II

That this court has no jurisdiction of the subject of this action in this: in that this is a suit based upon the exercise by this defendant of his constitutional rights and by this suit plaintiff seeks a judgment of this court abridging said constitutional rights, which judgment this court has no jurisdiction to render.

III

That this court has no jurisdiction of the subject of this action in this: in that by said action it is sought to abridge the rights assured and guaranteed to the people and particularly to this defendant by Sections 9, 10 and 18 of Article I of the Constitution of the State of California and by the

First and Fourteenth Amendments to the Constitution of the United States; particularly the rights of free speech, free press and a freedom of assemblage, and that it is beyond the jurisdiction of this court to abridge said rights.

[fol. 152] IV

That this court has no jurisdiction of the subject of the action in this: in that the court lacks authority or power to act in the case except in a particular way, to-wit: to deny the relief prayed for by plaintiff.

V

That the petition for contempt does not state facts sufficient to constitute contempt by this defendant.

VI

That the fourth count of the said petition for contempt does not state facts sufficient to constitute contempt by this defendant.

Wherefore, this demurring defendant prays that plaintiff take nothing by this, its said action, and that this defendant go hence with his costs.

David Sokol, Attorney for Defendant, L. L. Sylvaine.

I hereby certify that the above demurrer is, in my opinion, good in point of law, and that the same is not filed for delay.

David Sokol.

[File endorsement omitted.]

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[fol. 153] In Superior Court of Los Angeles County

Supplemental Joint Affidavits of Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull in Support of the Plaintiff's Application for Contempt Proceedings as Against G. (Gay) Lilleflorен—Filed June 21, 1946

State of California,
County of Los Angeles, ss:

Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull, and each of them being first separately sworn, each of them hereby deposes and says:

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That on June 6, 1946 affiants and each of them drove and rode in a large deisel powered truck of Farmer Bros. Co. *from the plant of the plaintiff at 3828 South Main Street,* Los Angeles, California, to the Outer Harbor Dock and Wharf Company's office and Berths 41-55 which are located at Los Angeles outer harbor at San Pedro, Los Angeles County, California. That affiants together went into the office of the Outer Harbor Dock and Wharf Company at said place and presented to said company its papers and billings for 150 sacks of Colombia coffee then on the floor of said Berth 52 at said place. That there was at said place, upon the floor of said dock or berth, 150 sacks or bags of green coffee, the property of the plaintiff and to which it was then entitled. That the delivery clerk at said place and of said company said that affiants might take said coffee on behalf of the plaintiff, Farmer Bros. Co., and assigned one of its employees to check said coffee through the door and onto the truck of Farmer Bros. Co. which was then standing at said dock, ready to take delivery of said coffee. That [fol. 154] the checker assigned to check said merchandise was William (Bill) Glassey, who accompanied affiants to door #4 of said pier or berth or so-called dock. That said Glassey, acting for Outer Harbor Dock and Wharf Company, directed affiants to back the truck of Farmer Bros. up to and touching the entrance of door #4 which was then opened, which affiants then did. Then said Bill Glassey then said, pointing to the stack of coffee, "There it is—go to it."

Affiants and each of them then obtained from the far wall of said warehouse three hand operated trucks upon which they placed 5 sacks each, weighing 150 lbs. each upon each of said hand trucks, or a total of 15 sacks. That affiants wheeled the first two hand trucks onto the truck of Farmer Bros. through door #4 and into the truck of Farmer Bros. depositing said sacks of coffee in the forward end of said truck. Affiants were about to wheel the third hand truck of 5 sacks likewise into said truck through door #4 when the defendant, G. Gay Lillefloren appeared for the first time on said day, to wit: at about 9:35 A. M. and handed to John Boyd Rogers a picket arm-band reading: "A. F. of L. Picket" and said Lillefloren actually placed upon the arm of said John Boyd Rogers the said band which was maintained upon the said arm of said John Boyd Rogers during all of the balance of the stay of affiants at said place on said day.

That said Lillenfloren then, in a loud voice announced and stated to affiants and each of them in the presence of O. M. Ebersold, a checker employed by Outer Harbor Dock and [fol. 155] Wharf Company and in the presence of John Boyd Rogers, as follows: "This is now a picket line right here—right across this door and right in front of and across the door opening of Farmer Bros. truck." That said Lillenfloren then directed John Boyd Rogers to stand with a picket armband to the left side of said door 4 and immediately on the left side of the opening into the truck of Farmer Bros., which said Rogers did, while said defendant Lillefloren walked up and down through the remaining space in front of door 4.

That thereupon, William Forbes, the dock superintendent of Outer Harbor Dock and Wharf Company appeared and conferred with O. M. Ebersold and William Glassey, the two checkers and after conferring with said checkers, stated to affiants: "These empolyees of ours will not go through this picket line. We cannot permit you to take this coffee." R. B. Turnbull then stated to said William Forbes: "Will you permit us (indicating Roy F. Farmer, Ray C. Turnbull and himself) to continue to load this coffee into our own truck, because we are not going to pay any attention to this illegal picket line." The defendant Lillefloren then stated: "If you permit this coffe to be moved off this dock floor and taken away I will call additional men and we will throw a picket line around the entire dock." Messrs. Glassey, Ebersold and Forbes then stated that they would not permit affiants to take any more of the coffee off the dock into the truck of Farmer Bros. Company and requested affiants to remove the 10 bags already loaded in [fol. 156] said truck. That R. B. Turnbull stated that he, and his companions, the affiants herein and none of them would reload said coffee out of their truck back on the dock that it was the coffee of the plaintiff and they were going to drive it -way to the plant of the plaintiff. That thereupon O. M. Ebersold, the checker, requested the defendant, Lillefloren to obtain the reloading of the coffee back on the dock and said G. Gay Lillefloren and his picket John Boyd Rogers took hand trucks from the floor of the dock, took them into the truck of the plaintiff and trucked out said ten sacks of coffee and dumped them back onto the dock.

All of the foregoing events occurred between 9:15 A. M.

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and 11:00 A. M. on June 6, 1946 at the place aforesaid. That at said time and place, no labor controversy or strike of any kind, no walk-out, no boycott existed as between Outer Harbor Dock and Wharf Company and its employees or any of them; that no labor controversy existed at said time between the plaintiff, Farmer Bros. Co. and its employees or any of them and no employee of Farmer Bros. Company was out on strike.

Being unable to obtain said coffee affiants returned to the driver's seat of said truck and as they were about to drive off, defendant Lillefloren said "Where are you going now? Back over to Terminal Island again? If you do, there is still a picket line over there."

[fol. 157] That affiants then drove to Berth 230-AB, Terminal Island, Wilmington, Los Angeles County, California, which is the dock and berth of the Indies Terminal Company and at said place attempted to take delivery of coffee on said dock belonging to the plaintiff and to which the plaintiff was entitled. That they were met at said place by another picket line consisting in part of Syl Sylvane, also known as L. L. Sylvane. During the time they were at said berth 230-AB and on said June 6, 1946, at about the hour of 11:00 A. M. the defendant G. Gay Lillefloren drove up to said pier in an automobile, came onto the dock or pier and in the presence of all the affiants and in the presence of Mr. Murray, the dock superintendent, and in the presence of John Bork, the delivery clerk of the Indies Terminal Company, stated, pointing to Syl Sylvane and another unknown person who were then standing by the truck of the plaintiff and at the open door #19 of said dock, "This is a picket line of this truck only, as to the coffee of Farmer Bros. on the dock, as to their truck and as to this door." Thereafter and within a few moments, defendant Lillefloren and said Syl Sylvane left door 19, leaving the unnamed picket thereat and within a space of six or seven minutes, said Syl Sylvane and said Lillefloren returned to door 19 of said dock, bearing two signs on wooden standards which said Sylvane carried over his shoulders, each of said signs reading: "Unfair to Organized Labor A. F. of L. Local #595."

[fol. 158] That affiant R. B. Turnbull requested John Bork, the delivery clerk, and Mr. Murray the assistant manager, and Mr. Ralph Bennett permission to take said coffee from

the dock through said picket line consisting of Syl Sylvane, G. Gay Lillefloren and an unknown person and said Lillefloren stated and repeated the statement previously made at said place by Syl Sylvane, to-wit: said Lillefloren stated: "This is now a picket line only of this door and of this you place and of this coffee, but if [we] let this coffee go off this dock to Farmer Bros. Company, I will put a picket line around the entire dock."

Thereupon said Ralph Bennett stated to R. B. Turnbull that he had a large ship coming in very shortly to this dock and that he would be unable to unload the cargo from said ship if a general picket line were thrown around the dock or even if the present three-man picket line (indicating defendants G. Gay Lillefloren, Syl Sylvane and the unknown picket) were maintained. Said Ralph Bennett then stated to said R. B. Turnbull that he would not permit these affiants, including R. B. Turnbull to remove any coffee from the dock. Said Bennett stated that he needed the floor space on the dock occupied by plaintiff Farmer Brothers Company's coffee; that he would like to see it removed but that he and his company, the Outer Harbor Dock and Wharf Company were helpless in the face of the threats which had been made that day by said Syl Sylvane and by said Lille- [fol. 159] floren and said Bennett stated that he would not permit any of the plaintiff's coffee to be taken from said dock or berth.

Affiants allege that at the times mentioned in this affidavit, and all thereof, that no strike, walk-out, lock-out or labor dispute existed between Outer Harbor Dock and Wharf Company and any of its employees; likewise no strike, lock-out, walk-out or labor controversy existed between the plaintiff, Farmer Bros. Co. and its employees.

Roy F. Farmer, Ray C. Turnbull, R. B. Turnbull.

Subscribed and sworn to before me by each of the affiants, Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull, this 8 day of June, 1946. Vera V. Searcy, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Dec. 30, 1949. (Seal.)

[File endorsement omitted.]

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[fol. 160] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVITS OF ROY F. FARMER, RAY C. TURNBULL AND R. B. TURNBULL IN SUPPORT OF PLAINTIFF'S APPLICATION FOR CONTEMPT PROCEEDINGS AGAINST THE DEFENDANT SYL SYLVANE, ALSO KNOWN AS L. L. SYLVANE—Filed June 21, 1946

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull, each for himself being first duly sworn, each deposes and says as follows:

That on the 6th day of June, 1946 there was upon the dock of Indies Terminal Company, Berth 230-AB, Terminal Island, Wilmington, California, 769 bags of green coffee, the property of the plaintiff and which the plaintiff was entitled to have possession thereof. That on said June 6, 1946 at the hour of 10:30 A. M. the three affiants herein, acting on behalf of the plaintiff, Farmer Bros. Co., appeared with a large deisel truck and at said Berth 230-AB aforesaid, R. B. Turnbull served Mr. John Bork, who was then the chief delivery clerk of Indies Terminal Company with a copy of the temporary restraining order and order to show cause issued by the Honorable Judge Willis of this court on the 22nd day of May, 1946 and across which temporary restraining order had been written the words, "This restraining order continued in effect to June 7, 1946." That said R. B. Turnbull also served a copy of said same temporary restraining order with the same words written thereon as aforesaid on Mr. Murray, the then assistant manager of the Indies Terminal Company. That said persons and each of [fol. 161] them were present at said berth and dock aforesaid at said time. That R. B. Turnbull explained to said Messrs. Bork and Murray the effect of said injunction and thereupon said Bork and Murray conferred with the general manager of Indies Terminal Company, Mr. Ralph Bennett. Said Messrs. Bork and Murray then informed affiants that they could have the coffee and Mr. Bork directed affiants to take the truck of Farmer Bros. to door 19 which is directly opposite and distant about 20 feet from the coffee of the plaintiff, piled upon said dock floor.

That said Bork then cranked open door 19 and assigned Henry Ambrosi, a checker employed by the Indies Terminal Company to check said coffee off the floor of said dock and onto said truck. That affiants Ray Turnbull and Roy F. Farmer obtained hand trucks from the floor of the dock and were about to commence loading said sacks of coffee from the dock onto the truck when the defendant, Syl*a* Sylvane appeared together with a man unknown to affiants. That said Syl Sylvane then placed upon his arm a cloth arm band reading in large letters thereon: "A. F. of L. Picket." That the other unknown person with said Syl Sylvane also placed upon his arm a similar arm band. That said R. B. Turnbull then served said Syl Sylvane and said unknown man and each of them with a copy of the temporary restraining order and order to show cause as issued by this court by the Honorable Judge Willis on the 22nd day of May, 1946 by delivering to and leaving with each of said persons including Syl Sylvane a true, full and complete copy thereof. That there was written on the title page of said restraining order the words: "This restraining order continued in effect to June 7, 1946."

[fol. 162] That said Syl Sylvane then stated to affiants and to John Bork, the chief delivery clerk, to Mr. Murray, the assistant manager, and to Henry Ambrosi, the following words: "This is a picket line of the Teamsters' Union. We are picketing this dock; we are picketing this truck of Farmer Bros. and we are picketing this coffee of Farmer Brothers," and then, addressing himself to Henry Ambrosi, said Syl Sylvane said: "This Farmer Brothers is on the unfair list and you are not to check them this coffee or let them have any of it." Mr. Ralph Bennett, the general manager of Indies Terminal Company, then came from his inner office upon the dock and said Sylvane stated in the presence of affiants and each of them and the other persons herein mentioned and each of them, including John Bork and Mr. Murray: "If you let these men (referring to affiants) take this coffee from this dock I will throw a picket line around the whole dock and you won't load or unload anything." Mr. Henry Ambrosi then said: "I will not now deliver the coffee to Farmer Bros."

R. B. Turnbull then asked for the names and authority of said Syl Sylvane and the man accompanying him, which they and each of them refused to give. Syl Sylvane then stated:

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"If you don't think this is a picket line, I will go out to my car and get some big picket signs." Syl Sylvane then left the dock and returned to the neighboring dock, 238, driving his car, California License No. 73 E 7170. Said defendant Syl Sylvane then took from said car two (2) large picket signs fastened upon sticks which he carried over his shoulder and came to and stood before the open door 19 of said pier or Berth 230-AB of the Indies Terminal Company and [fol. 163] he, together with said unknown man, maintained upon their arms the bands reading: "A. F. of L. Picket." That the two men stood directly in front of the opening of door 19 and within a few feet of the truck of Farmer Bros., standing at said entrance to take delivery of said coffee.

That R. B. Turnbull then requested of Ralph Bennett as general manager of Indies Terminal Company, of John Bork as general delivery clerk and of Mr. Murray as assistant manager, the permission to take from the dock himself and by the use of the three affiants herein, to load said coffee directly from said dock onto the truck of Farmer Bros. Co. That said Ralph Bennett stated to R. B. Turnbull that he was unable, in view of the threats of Syl Sylvane, to throw a picket line around the entire dock, to comply with said request. Said Ralph Bennett stated that the Indies Terminal Company had a large ship arriving at Berth 230-AB very shortly with a full cargo and he could not unload said ship upon his dock if said picket line was maintained thereat as threatened by Syl Sylvane, or even as it was then maintained at door 19. That said Ralph Bennett and said Mr. Murray and each of them both refused and denied affiants as plaintiff's representatives or plaintiff permission to take said coffee or any of the plaintiff's coffee from the dock of the Indies Terminal Company.

That at said time Mr. Murray, acting as assistant manager, and Mr. Ralph Bennett, acting as manager of Indies [fol. 164] Terminal Company, stated that there was no labor trouble existing of any kind, no strike, no boycott, no lock-out or no labor grievances over wages, working conditions or otherwise as between Indies Terminal Company and its employees.

Affiants allege that during all the times mentioned in this affidavit, no strike existed, no lock-out existed and no labor controversy existed as between the plaintiff, Farmer Bros.

Co. and any of its employees and that no employee of the plaintiff was on strike.

Roy F. Farmer, Ray C. Turnbull, R. B. Turnbull.

Subscribed and sworn to before me by each of the affiants, Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull, this 8 day of June, 1946. Vera V. Searcy, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Dec. 30, 1949. (Seal.)

[File endorsement omitted.]

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[fol. 165] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER OF HEARING

Order to show cause *re* preliminary injunction; demurrers (2) and motions (2) to strike, come on for hearing. Rupert B. Turnbull and Russell E. Parsons, by Russell E. Parsons, appearing as attorneys for the plaintiff and V. P. Lucas, for Wholesale Delivery Drivers and David Sokol for certain defendants. Hearing is continued to June 7, 1946, at 9:30 A. M. The restraining order is to remain in force.

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[fol. 166] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER RE MOTION TO QUASH

Motion of Linde Air Products to quash service; order to show cause *re* preliminary injunction; demurrers (3) to complaint and motions (3) to strike come on for hearing. Rupert B. Turnbull and Russell E. Parsons, by Russell E. Parsons, appearing as attorneys for the plaintiff and V. P. Lucas for Wholesale Drivers; David Sokol for certain defendants and Gibson, Dunn & Crutcher, by Fred Fields, for Linde Air Products and Clarence Todd for certain defendants. By stipulation, motion to quash is granted. All other matters are continued to July 8, 1946, at 9:30 A. M. The restraining order is to remain in force.

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[fol. 167] In Superior Court of Los Angeles County

Answer of Defendant Gay Lillefloren to the Order to Show Cause in re Contempt—Filed July 8, 1946

Comes now the defendant Gay Lillefloren and appearing for himself and not otherwise and answering the pleadings and affidavits on file herein with respect to the order to show cause *in re* contempt admits, denies and alleges as follows:

I

Denies each, all and every of the allegations set forth in counts one, two, three and four of said petition and denies each, all and every of the matters and things set forth in the joint affidavit of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull and denies each and all of the matters and things set forth in the affidavits of Ted Ehler, Roy F. Farmer and the matters and things set forth in the supplemental joint affidavits of Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull and denies each and all of the allegations in matters and things contained in the affidavits of Roy F. Farmer, Ray C. Turnbull and R. B. Turnbull, which last said affidavit was subscribed and sworn to before the notary on the 8th day of June, 1946, being the last affidavit attached to the order to show cause *in re* contempt.

Wherefore, having fully answered, respondent and defendant Gay Lillefloren prays that said order to show cause may be dismissed.

—— ——, Attorney for Defendant-Respondent.

Verified.

Endorsed: Filed Jul. 8, 1946. J. F. Moroney, county clerk; by J. E. Shaw, deputy.

[fol. 168] In Superior Court of Los Angeles County

Memo. of Opinion—Filed July 12, 1946

Re Motions and Demurrers to Complaint

The motion of defendant Wholesale, etc., Union Local No. 848 to strike all of paragraph XX from plaintiff's complaint is denied. The demurrer of the same defendant is overruled—ten days granted to answer. The joint demurrer of defendants Bee Schmidt, Ted Wills, George Rollis, Fred V. Irvin, H. C. McNally and the respective unions represented by them, and Line Drivers Local 224, is overruled—ten days granted to answer.

The motion of defendant Ralph Woolport as an individual and as Secretary of Grocery Warehousemen's Local 595 to strike certain paragraphs of plaintiff's complaint is denied as to all specified paragraphs.

The demurrer of the same defendants is overruled—ten days granted to answer.

Re Demurrers to Contempt Affidavit

The demurrer of Gay Lillefloren to the contempt affidavits is overruled.

The demurrer of L. L. Sylvane to the contempt affidavits is overruled.

Further proceedings in both matters continued to July 29, 1946, at 9:30 o'clock a. m.

July 12, 1946.

Willis, Judge.

[File endorsement omitted.]

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[fol. 169] In Superior Court of Los Angeles County

Demurrer of Gay Lillefloren to Order to Show Cause in re Contempt—Filed July 8, 1946

Comes now Gay Lillefloren and appearing for himself and himself alone and demurs to the affidavits and each of them on file herein and to the alleged counts in the pleadings on file and for cause of demurrer alleges:

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I

That the said counts and each of them and the affidavits and each of them on file herein do not state facts sufficient to constitute a contempt of court.

Wherefore, the said Gay Lillefloren prays judgment as to the sufficiency of the affidavits and the moving papers in support of the order to show cause.

V. P. Lucas, Attorney for Defendant Lillefloren.

I hereby certify that the foregoing demurrer is taken in good faith and not for the purpose of delay.

V. P. Lucas, Attorney for Defendant Lillefloren.

Points and Authorities

Contempt of court is a specific criminal offense.

See

McClatchy vs. Superior Court, 119 Cal. 413;
*Ex parte* Gould, 99 Cal. 360.

[fol. 170] In such a proceeding the court exercises but a limited jurisdiction.

See

Schwartz vs. Superior Court, 111 Cal. 106;
Hotaling vs. Superior Court, 191 Cal. 501.

In a prosecution for constructive contempt, the affidavits on which the citation or order to show cause is issued constitutes the complaint.

See

Hutton vs. Superior Court, 147 Cal. 156.

The affidavits of the defendant constitute the answer or plea and the issues of fact are framed by the respective affidavits serving as pleadings. A hearing must be had upon these issues at which competent evidence must be produced. The proceeding is of such a distinctively criminal nature that a mere preponderance of evidence is insufficient and the defendant cannot be compelled to be sworn as a witness and he cannot be convicted upon the uncorroborated testimony of an accomplice.

See

*In re* Buckley, 69 Cal. 1;
Mitchell vs. Superior Court, 163 Cal. 423;
Hotaling vs. Superior Court, 191 Cal. 501.

It has been thoroughly settled in this state that the affidavit by which a contempt proceeding is instituted in order to sufficiently support an adjudication of contempt must state facts constituting the offense. It is the complaint in [fol. 171] such a case and if it is defective in not stating an offense the adjudication of contempt cannot stand.

See

Berger vs. Superior Court, 175 Cal. 719.

The recent case of:

Bridges vs. Superior Court, 14 Cal. (2d) 464, 94 Pac. (2d) 983,

is authority for the proposition that a demurrer lies to test the sufficiency of the affidavits on which the order to show cause has been issued. The Supreme Court in the Bridges case also recognized that in a contempt proceeding the alleged contemner could file a verified answer in lieu of affidavits. The court in the Bridges case said:

"The petitioner appeared and both by motion to quash order to show cause and by demurrer raised the procedural question and contended that the proceeding against him was a criminal proceeding and should have been brought in the name of the People of the State of California, as plaintiff, and prosecuted by the District Attorney of the County * * *. Both the motion and the demurrer were held to be without merit and accordingly the motion was denied and the demurrer overruled. The petitioner thereupon filed a verified answer to the judgment against him and the case was then set for trial upon the issues made by said answer and the affidavits of Elkins and others."

The restraining order of May 22, 1946, which it is alleged that defendant Lillefloren has violated does not restrain or enjoin the said Lillefloren from picketing the product of the plaintiff corporation wherever it may be found. The affidavits and the so-called counts in the pleading show that [fol. 172] the actions of Lillefloren were directly concerned with the product of the plaintiff and that the conduct of Lillefloren was not what is termed in the statute or defined by the courts as secondary boycott.

It is not alleged in any of the counts or in any of the affidavits in support of the contempt proceeding that the

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General Steamship Company or the Indies Terminal Company or the Outer Harbor Dock and Wharf Company sustained any contractual relations with the plaintiff corporation either as a customer of said plaintiff or as a supplier of plaintiff, nor is it shown in the so-called counts of the pleading or in the affidavits on file that the General Steamship Company or the Indies Terminal Company or the Outer Harbor Dock and Wharf Company ceased rendering any service to plaintiff or its agents or employees by reason of any of the acts of defendant Lillefloren, nor is it shown that the said above named companies were carriers of freight or products of plaintiff or that any of said corporations were under any agreement whatever with plaintiff or under any duty of rendering any service to plaintiff or its employees, agents or servants and the counts of the pleading and the affidavits in support of the order to show cause *in re* contempt each and all show that the product allegedly interferred with by the action of said Lillefloren belong to and title was vested in plaintiff corporation.

Respectfully submitted, V. P. Lucas, Attorney for Defendant Lillefloren.

[File endorsement omitted.]

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[fol. 173] In Superior Court of Los Angeles County

Minute Order Re Rulings on Certain Demurrers

Order to show cause *in re* contempt comes on for hearing and is ordered off calendar. The two demurrers to the affidavits for contempt heretofore submitted are now overruled; the motion of Ralph Woolport to strike from the complaint is denied and his demurrer is overruled with ten days to answer. The order to show cause *re* contempt; order to show cause *re* preliminary injunction; demurrers (2) to complaint and motions (2) to strike are continued to July 29, 1946, at 9:30 A. M.

[fol. 174] IN SUPERIOR COURT OF LOS ANGELES COUNTY

MINUTE ORDER RE ARGUMENT AND SUBMISSION

Hearing on orders to show cause is resumed from August 14, 1946, with counsel present as before. Raymond C. Turnbell, Roy F. Farmer, Roy E. Farmer are sworn and testify for plaintiff. Plaintiff rests. Defendants rest. Orders to show cause is argued. The matter is submitted. Briefs to be filed, 5-10-5 days allowed: Plaintiff to open. Hearing is continued to September 17, 1946, at 10:00 A. M.

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[fol. 175] IN SUPERIOR COURT OF LOS ANGELES COUNTY

AFFIDAVIT. IN THE MATTER OF HOMER FORD, RUSSELL MARKS AND IRV MAGISON, CHARGED BY AFFIDAVIT FILED ON JUNE 21, 1946, WITH CONTEMPT OF COURT BY VIOLATION OF THE ORDER OF THIS COURT DATED MAY 22, 1946—Filed September 20, 1946

The charges in the affidavit herein grow out of the same proceeding and allege violation of the same court order as in the matter of Gay Lillefloren and Syl Sylvane, heretofore disposed of:

It is true that respondent Marks was not present at the actual time of picketing of the General Steamship brought the pickets there in his car on that day and also Company dock as alleged in count one, but he ^ was present and participated with respondents Magison and Ford as the committee which called upon the superintendent in charge of the dock a few days before and threatened to picket the entire dock if he allowed plaintiffs to get the coffee. The threat was carried out and [it succeeded in preventing plaintiff from obtaining its coffee until]* some days later when a separate action was brought and the coffee seized by the sheriff with armed the picketing took place deputies, ^ and five gangs of longshoremen as well as the

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* Words enclosed in brackets stricken in copy.

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checkers who were working on merchandise having no [fol. 176] connection with plaintiffs, actually stopped work for three-quarters of an hour.

All of the three charged in the affidavit were present and engaged in the entire proceeding as charged in count two.

The principles enunciated in the opinion in the Lillefloren and Sylvane matter apply here; the threats were made for the same purpose, viz.: To compel the operators of the respective docks to do an unlawful act.

I find the substantial allegations of the affidavit to be true except as above noted.

It is therefore the order of this court that respondent Homer Ford be committed to the County Jail for the period of three (3) days on each count and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each count; provided, however, that the said terms shall be served concurrently, and provided further that payment of the said fine on either of said counts shall work a discharge of the fine on the other count also.

It is the further order of this court that Russell Marks be committed to the County Jail for the period of three (3) days on each count and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each count; provided, however, that the said terms shall be served concurrently, and provided that payment of the said fine on either of said counts shall work a discharge of the fine on the other count also.

[fol. 177] It is the further order of this court that Irv Magison be committed to the County Jail for the period of three (3) days on each count and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each count; provided, however, that the said terms shall be served concurrently, and provided that payment of the said fine on either of said counts shall work a discharge of the fine on the other count also.

Formal findings and commitment necessary to carry the judgment of this court into effect are signed concurrently herewith.

September 20, 1946.

Jess E. Stephens, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 178] In Superior Court of Los Angeles County

Judgment and Warrant of Commitment on Conviction of Contempt of Court of Homer Price—September 20, 1946

Be it remembered that on May 21, 1946, the above named plaintiff commenced an action against the above named defendants, including respondent Homer Ford, seeking to secure injunctive relief against the acts of the defendants alleged therein as violative and in contravention of the rights of plaintiff herein and of the so-called "Hot Cargo and Secondary Boycott Act" enacted by the Legislature of California in the 1941 session and later approved by the people under the referendum law in the general election of November, 1942; that the respondent Homer Ford is and was at the times mentioned herein the agent and representative of defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848;

That on May 22, 1946, upon application of the plaintiff, supported by verified complaint, the court signed and issued an order to show cause in the usual form and a temporary restraining order containing, among others, the following provisions:

"Upon reading the verified Complaint and Affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the Court that this is a proper case for the issuance of a Temporary Restraining Order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

It Is Hereby Ordered that defendants, and each of them, be and appear before the above named court in the [fol. 179] court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, Cailfornia, on the 31st day of May 1946, at the hour of 9:30 A.M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and

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all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for [fol. 180] said employers, or any of them or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.

And It Is Further Ordered that copies of the Complaint, Summons, the within Order to Show Cause and

Temporary Injunction, together with plaintiff's Points and Authorities and Affidavit, be served upon defendants on or before May 25, 1946.

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, *Judge of the Superior Court.*"

[fol. 181] That on May 23, 1946, a copy of said temporary restraining order and order to show cause was regularly served upon respondent Homer Ford and he has been aware of its contents since said date;

That on June 21, 1946, one Roy Farmer, president of plaintiff corporation, filed his affidavit for contempt with petition for an order to show cause wherein, among other things, he charged that respondent Homer Ford had engaged in combinations and agreements with officers and representatives of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, and with Syl Sylvane, and with other persons and organizations named in said complaint, to cause employees of the Indies Terminal Company, and General Steamship Company, to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing or coercing said Indies Terminal Company and General Steamship Company to refuse to handle and deliver any goods to plaintiffs and to refrain from doing business with the plaintiff because of a labor dispute between plaintiff and defendants; and to cause said Indies Terminal Company and General Steamship Company, and the employees of each of them, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Indies Terminal Company and General Steamship Company, and each of them, and their respective docks, wharfs, and terminals, for the purpose of causing the employees of said companies, and each of them, to refuse to perform services for their said respective employers; and to maintain pickets upon and adjacent to the said docks, wharfs, and terminals, and each of them, for the purpose of causing said Indies [fol. 182] Terminal Company, and General Steamship Company, and their respective employees to refuse to perform services for and to deliver goods to plaintiff because of a labor dispute between plaintiff and defendants;

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That on June 21, 1946, an order to show cause why said respondent should not be punished for contempt as charged in said affidavit was issued and served upon respondent, returnable July 12, 1946;

That on the above date, or subsequent thereto, respondent appeared in response to said order to show cause and the hearing thereon was continued by stipulation and said restraining order was continued in force to and including the date of August 12, 1946, and thereafter, and it is still in effect:

Upon the calling of the matter of contempt on August 12, 1946, the respondent appearing in person and by attorney in Department 30 of this court, witnesses were sworn and evidence, both documentary and oral, was received in support of the allegations contained in said affidavit; thereupon both parties rested, the respondent electing to present no evidence in his own behalf; thereupon by stipulation the matter was continued to September 17, 1946, and on that date again continued to September 20, 1946, for the purpose of entering the decision of the court, and in the meantime the respective parties by stipulation were permitted to file written arguments and citation of authorities, and these were filed in accordance therewith; the court having considered the evi- [fol. 183] dence and the law presented, and being fully advised therein, now presents his findings, judgment and decision, and commitment therein:

### Findings, Judgment and Commitment

Upon the evidence and the stipulation of the parties, the court now finds that prior to and on May 24, 1946, and thereafter to and including the dates of the acts of the respondent hereinafter set forth, the said respondent Homer Ford, together with Syl Sylvane, Gay Lillefloren, Russell Marks, Irv Magison, and other members of defendant union, Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, together with other persons and organizations named in said complaint and in said affidavit, began and continued

(a) To cause the employees of Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their respective employers above

named, in connection with the delivery of goods to plaintiff, for the purpose of causing and coercing the said Indies Terminal Company and General Steamship Company, and each of them, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with plaintiff because of a labor dispute between plaintiff and defendants;

(b) To cause said Indies Terminal Company and General Steamship Company, and each of them, and their respective employees, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said [fol. 184] Indies Terminal Company and General Steamship Company, and their respective docks, wharfs and terminals, for the purpose of causing employees of said Indies Terminal Company and General Steamship Company, and each of them, to refuse to perform services for their said respective employers because of a labor dispute between plaintiff and defendants;

The court further finds that on or about June 11, 1946, Russell Marks and Irv Magison, for the purpose of carrying out and effectuating said combination and agreements herein above referred to, called upon Mr. Harry Reese, pier superintendent for General Steamship Company, at his office at the pier of said company at Los Angeles harbor, and told said superintendent that if the coffee belonging to Farmer Bros. then being upon the said pier, or dock, was permitted to be delivered to Farmer Bros. that the entire dock would be picketed; that said dock is 1000 feet long and does a general shipping business;

The court further finds that on June 13, 1946, the said Homer Ford did the following acts for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

On June 13, 1946, the sheriff of Los Angeles County, State of California, appeared at the dock of the General Steamship Company, at Berth 230, at Los Angeles harbor, pursuant to an order of this court issued in an action of claim and delivery brought by plaintiff herein against General Steamship Company for the purpose of receiving [fol. 185] 1500 sacks of coffee which had arrived there from South America consigned to plaintiff; immediately upon his appearance Russell Marks drove up in his car and brought several pickets with him; these men im-

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mediately put on arm bands and established a picket line at the entrance to the dock warehouse in front of which plaintiff's trucks were drawn up; Russell Marks then drove away; respondent Homer Ford appeared at approximately the same time, together with Irv Magison and Gay Lillefloren and the three of them conversed together; at that time respondent Homer Ford had stated to the representative of plaintiff that the latter was not going to get the coffee, and when said representative replied that they already had two or three trucks loaded, respondent Ford stated "Well, you are not going to get all of it." This conversation took place in the presence of Irv Magison and Gay Lillefloren. The said pickets continued to walk up and down in front of the dock entrance and between it and the trucks during the entire time that the truck was being loaded and while the 12 armed deputy sheriffs were present and in charge of the seizure of the coffee. During this time there was a ship loading at the same dock with merchandise other than that of the plaintiff herein and there were 5 gangs of longshoremen engaged in that work, each gang consisting of approximately 20 to 22 men;

Immediately upon the formation of the picket line, as above indicated, all of these 5 gangs of lon*k*shoremen [fol. 186] slowed down in their work and stood around and waited for the arrival of their business agent for instructions; upon the arrival of the business agent they immediately stopped work, about 10 o'clock in the morning, and did not resume until 11:30 that morning; the men working as checkers also stopped work; the merchandise that was being loaded by these gangs was cotton, in which plaintiff herein had no interest whatsoever;

After the sheriff had loaded all the coffee at the General Steamship Company dock, he then moved with his deputies and trucks to the dock of the Indies Terminal Company where a shipment of coffee belonging to plaintiff awaited delivery to plaintiff; at this dock respondent Homer Ford, and also Irv Magison and Russell Marks, appeared, together with the same pickets that had been at the General Steamship Company dock and the picket line was immediately established in a similar manner to that at the General Steamship Company dock; the pickets continued to walk up and down in the picket line during all

the time in which the sheriff and his deputies were seizing the coffee, and respondent Homer Ford together with Irv Magison and Russell Marks also remained there during this period; while this was going on plaintiff's representative had a conversation with respondent Ford, together with said Magison and Marks, in which they informed said representative that they, the said Ford, Magison and Marks, had the power to stop plaintiff from getting its own merchandise and that they were [fol. 187] going ahead and exercise that power; the workmen employed by plaintiff at the request of the sheriff to do the actual work of loading the coffee on behalf of the plaintiff continued to load said coffee on to said trucks and the armed deputy sheriffs remained there until all the coffee was loaded, whereupon they left and said pickets and said Ford, Magison and Marks also left;

That because of the said acts of said Homer Ford, in concert with Russell Marks and Irv Magison, and the other persons and organizations hereinabove set forth, the said Indies Terminal Company and General Steamship Company, and each of them, refused to perform any services for or to deliver any goods to plaintiff, and said acts of said Homer Ford further resulted in a refusal by employees of said Indies Terminal Company and General Steamship Company, and each of them, to handle any goods for their employer intended for delivery to plaintiff, and to perform services for their said respective employers in connection with the handling of such goods for delivery to plaintiff, or to permit plaintiff to take its own goods upon demand therefor.

Upon the foregoing findings of fact, the court concludes and adjudges that the respondent Homer Ford has wilfully disobeyed a lawful order of the court, to-wit: the provisions of the Temporary Restraining Order hereinabove set forth, and that said respondent is guilty of contempt [fol. 188] as defined in Section 1209, subsection 5 of the Code of Civil Procedure, by reason of said acts, as found hereinabove.

Now, therefore, upon this 20th day of September, 1946, the respondent having personally appeared in the presence of the court together with his counsel,

It is adjudged that Homer Ford is guilty of contempt of court as hereinabove found and determined and that

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he be committed to the County Jail for the period of three (3) days on each of said two counts, and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each of said two counts; provided, however, that said terms shall be served concurrently and, provide further, that a payment of the said fine on either of the counts shall work a discharge of the fine on the other count as well as the one upon which payment is made.

It is the further order of this court that the said Homer Ford be, and he is hereby committed to the custody of the sheriff of Los Angeles County, State of California, and said officer is hereby instructed to carry this order into effect.

September 20, 1946.

Jess E. Stephens, Judge.

[File endorsement omitted.]

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[fol. 189] IN SUPERIOR COURT OF LOS ANGELES COUNTY

JUDGMENT AND WARRANT OF COMMITMENT ON CONVICTION OF CONTEMPT OF COURT OF RUSSELL MARKS—September 20, 1946

Be it remembered that on May 21, 1946, the above named plaintiff commenced an action against the above named defendants, including respondent Russell Marks, seeking to secure injunctive relief against the acts of the defendants alleged therein as violative and in contravention of the rights of plaintiff herein and of the so-called "Hot Cargo and Secondary Boycott Act" enacted by the Legislature of California in the 1941 session and later approved by the people under the referendum law in the general election of November, 1942; that the respondent Russell Marks is and was at the times mentioned herein the agent and representative of defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848;

That on May 22, 1946, upon application of the plaintiff, supported by verified complaint, the court signed and issued an order to show cause in the usual form and a temporary restraining order containing, among others, the following provisions:

"Upon reading the verified Complaint and Affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the Court that this is a proper case for the issuance of a Temporary Restraining Order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

It Is Hereby Ordered that defendants, and each of them, be and appear before the above named court in [fol. 190] the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transporation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said [fol. 191] employers, or any of them, or causing or agree-

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ing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.

And It Is Further Ordered that copies of the Complaint, Summons, the within Order to Show Cause and Temporary Injunction, together with plaintiff's Points and Authorities and Affidavit, be served upon defendants on or before May 25, 1946.

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, Judge of the Superior Court."

That on May 24, 1946, a copy of said temporary restraining order and order to show cause was regularly served upon respondent Russell Marks and he has been aware of its contents since said date;

[fol. 192] That on June 21, 1946, one Roy Farmer, President of plaintiff corporation, filed his affidavit for contempt with petition for an order to show cause wherein, among other things, he charged that respondent Russell Marks had engaged in combinations and agreement with officers and representatives of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, and with Syl Sylvane, and with other persons and organizations named in said complaint, to cause employees of the Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing

or coercing said Indies Terminal Company and General Steamship Company to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with the plaintiff because of a labor dispute between plaintiff and defendants; and to cause said Indies Terminal Company and General Steamship Company, and the employees of each of them, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Indies Terminal Company and General Steamship Company, and each of them, and their respective docks, wharfs and terminals, for the purpose of causing the employees of said companies, and each of them, to refuse to perform services for their said respective employers; and to maintain pickets upon and adjacent to the said docks, wharfs and terminals, and each of them, for the purpose of causing said Indies Terminal Company and General Steamship Company and their respective employees to refuse to perform services for and to deliver goods to plaintiff because of a labor dispute between plaintiff and defendants;

[fol. 193] That on June 21, 1946, an order to show cause why said respondent should not be punished for contempt as charged in said affidavit was issued and served upon respondent, returnable July 12, 1946;

That on the above date, or subsequent thereto, respondent appeared in response to said order to show cause and the hearing thereon was continued by stipulation and said restraining order was continued in force to and including the date of August 12, 1946, and thereafter, and it is still in effect;

Upon the calling of the matter of contempt on August 12, 1946, the respondent appearing in person and by attorney in Department 30 of this court, witnesses were sworn and evidence, both oral and documentary, was received in support of the allegations contained in said affidavit; thereupon both parties rested, the respondent electing to present no evidence in his own behalf; thereupon by stipulation the matter was continued to September 17, 1946, and on that date again continued to September 20, 1946, for the purpose of entering the decision of the court, and in the meantime the respective parties by stipulation were permitted to file written arguments and citation of authorities, and these were filed in accordance therewith; the court having considered the evidence and the law presented, and being fully

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advised therein, now presents his findings, judgment and decision, and commitment therein:

FINDINGS, JUDGMENT AND COMMITMENT

Upon the evidence and the stipulation of the parties, the court now finds that prior to and on May 24, 1946, and thereafter to and including the dates of the acts of the respondent hereinafter set forth, the said respondent [fol. 194] Russell Marks, together with Syl Sylvane, Gay Lillefloren, Homer Ford, Irv Magisen and other members of defendant union Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, together with other persons and organizations named in said complaint and in said affidavit, began and continued

(a) To cause the employees of Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their respective employers above named, in connection with the delivery of goods to plaintiff, for the purpose of causing and coercing the said Indies Terminal Company and General Steamship Company, and each of them, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with plaintiff because of a labor dispute between plaintiff and defendants;

(b) To cause said Indies Terminal Company and General Steamship Company, and each of them, and their respective employees, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Indies Terminal Company and General Steamship Company, and their respective docks, wharfs and terminals, for the purpose of causing employees of said Indies Terminal Company and General Steamship Company, and each of them, to refuse to perform services for their said respective employers because of a labor dispute between plaintiff and defendants;

The court further finds that on or about June 11, 1946, respondent Russell Marks and Irv Magison, for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, called upon Mr. Harry [fol. 195] Reese, pier superintendent for General Steamship Company, at his office at the pier of said company at Los Angeles harbor, and told said superintendent that if the coffee belonging to Farmer Bros. then being upon the

said pier, or dock, was permitted to be delivered to Farmer Bros. that the entire dock would be picketed, that said dock is 1000 feet long and does a general shipping business;

The court further finds that on June 13, 1946, the said Russell Marks did the following acts for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

On June 13, 1946, the Sheriff of Los Angeles County, State of California, appeared at the dock of the General Steamship Company, at Berth 230, at Los Angeles harbor, pursuant to an order of this court issued in an action of claim and delivery brought by plaintiff herein against General Steamship Company for the purpose of receiving 1500 sacks of coffee which had arrived there from South America consigned to plaintiff; immediately upon his appearance respondent Russell Marks drove up in his car and brought several pickets with him; these men immediately put on arm bands and established a picket line at the entrance to the dock warehouse in front of which plaintiff's trucks were drawn up; respondent Russell Marks then drove away; Homer Ford appeared at approximately the same time, together with Irv Magison and Gay Lillefloren and the three of them conversed together; at that time Homer Ford stated to the representative of plaintiff that the latter was not going to get the coffee, and when said representative replied that they already had two or three trucks loaded, said Ford stated, "Well, you are not going to get all of it." This conversation took place in the presence [fol. 196] of Irv Magison and Gay Lillefloren. The said pickets continued to walk up and down in front of the dock entrance and between it and the trucks during the entire time that the truck was being loaded and while the 12 armed Deputy Sheriffs were present and in charge of the seizure of the coffee. During this time there was a ship loading at the same dock with merchandise other than that of the plaintiff herein and there were 5 gangs of longshoremen engaged in that work, each gang consisting of approximately 20 to 22 men;

Immediately upon the formation of the picket line, as above indicated, all of these 5 gangs of longshoremen slowed down in their work and stood around and waited for the arrival of their business agent for instructions; upon the arrival of the business agent they immediately stopped

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work, about 10 o'clock in the morning, and did not resume until 11:30 o'clock that morning; the men working as checkers also stopped work; the merchandise that was being loaded by these gangs was cotton, in which plaintiff herein had no interest whatsoever;

After the Sheriff had loaded all the coffee at the General Steamship Company dock, he then moved with his deputies and trucks to the dock of the Indies Terminal Company where a shipment of coffee belonging to plaintiff awaited delivery to plaintiff; at this dock respondent Russell Marks, and also Irv Magison and Homer Ford, appeared, together with the same pickets that had been at the General Steamship Company dock and the picket line was immediately established in a similar manner to that at the General Steamship Company dock; the pickets continued to walk up and down in the picket line during all the time in which the Sheriff and his deputies were seizing the coffee, and respondent Russell Marks, together with Homer Ford [fol. 197] and Irv Magison, also remained there during this period; while this was going on plaintiff's representative had a conversation with respondent Marks, together with said Magison and Ford, in which they informed said representative that they, the said Marks, Magison and Ford, had the power to stop plaintiff from getting its own merchandise and that they were going ahead and exercise that power; the workmen employed by plaintiff at the request of the Sheriff to do the actual work of loading the coffee on behalf of the Sheriff continued to load said coffee on to said trucks and the armed Deputy Sheriffs remained there until all the coffee was loaded, whereupon they left and said pickets and said Marks, Magison and Ford also left;

That because of the said acts of said Russell Marks, in concert with Homer Ford, Irv Magison and the other persons and organizations hereinabove set forth, the said Indies Terminal Company and General Steamship Company, and each of them, refused to perform any services for or to deliver any goods to plaintiff, and said acts of said Russell Marks further resulted in a refusal by employees of said Indies Terminal Company and General Steamship Company, and each of them, to handle any goods for their employer intended for delivery to plaintiff, and to perform services for their said respective employers in connection with the handling of such goods for delivery to plaintiff, or

to permit plaintiff to take its own goods upon demand therefor.

Upon the foregoing findings of fact, the court concludes and adjudges that the respondent Russell Marks has wilfully disobeyed a lawful order of the court, to-wit: the provisions of the temporary restraining order hereinabove set forth, and that said respondent is guilty of contempt as [fol. 198] defined in Section 1209, subsection 5 of the Code of Civil Procedure, by reason of said acts, as found hereinabove.

Now, therefore, upon this 20th day of September, 1946, the respondent having personally appeared in the presence of the court together with his counsel,

It is adjudged that Russell Marks is guilty of contempt of court as hereinabove found and determined and that he be committed to the County Jail for the period of three (3) days on each of said two counts, and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each of said two counts; provided, however, that said terms shall be served concurrently and, provided further, that a payment of the said fine on either of the counts shall work a discharge of the fine on the other count as well as the one upon which payment is made.

It is the further order of this court that the said Russell Marks be, and he is hereby committed to the custody of the Sheriff of Los Angeles County, State of California, and said officer is hereby instructed to carry this order into effect.

September 20, 1946.

Jess E. Stephens, Judge.

[File endorsement omitted.]

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[fol. 199] In Superior Court of Los Angeles County

Judgement and Warrant of Commitment on Conviction of Contempt of Court of Irv Magison—September 20, 1946

Be it remembered that on May 21, 1946, the above named plaintiff commenced an action against the above named defendants, including respondent Irv Magison, seeking to secure injunctive relief against the acts of the defendants alleged therein as violative and in contravention of the rights

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of plaintiff herein and of the so-called "Hot Cargo and Secondary Boycott Act" enacted by the Legislature of California in the 1941 session and later approved by the people under the referendum law in the general election of November, 1942; that the respondent Irv Magison is and was at the time mentioned herein the agent and representative of the defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848;

That on May 22, 1946, upon application of the plaintiff, supported by verified complaint, the court signed and issued an order to show cause in the usual form and a temporary restraining order containing, among others, the following provisions:

"Upon reading the verified Complaint and Affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the Court that this is a proper case for the issuance of a Temporary Restraining Order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

It Is Hereby Ordered that defendants, and each of them, be and appear before the above named court in the court [fol. 200] room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Ex-

press, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, [fol. 201] The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.

And It Is Further Ordered that copies of the Complaint, Summons, the within Order to Show Cause and Temporary Injunction, together with plaintiff's Points and Authorities and Affidavit, be served upon defendants on or before May 25, 1946.

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, Judge of the Superior Court."

[fol. 202] That on May 22, 1946, a copy of said temporary restraining order and order to show cause was regularly served upon respondent Irv Magison and he has been aware of its contents since said date;

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That on June 21, 1946, one Roy Farmer, President of plaintiff corporation, filed his affidavit for contempt with petition for an order to show cause wherein, among other things, he charged that respondent Irv Magison had engaged in combinations and agreements with officers and representatives of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, and with Syl Sylvane, and with other persons and organizations named in said complaint, to cause employees of the Indies Terminal Company, and General Steamship Company, to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing or coercing said Indies Terminal Company and General Steamship Company to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with the plaintiff because of a labor dispute between plaintiff and defendants; and to cause said Indies Terminal Company and General Steamship Company, and the employees of each of them, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Indies Terminal Company and General Steamship Company, and each of them, and their respective docks, wharfs and terminals, for the purpose of causing the employees of said companies, and each of them, to refuse to perform services for their said respective employers; and to maintain pickets upon and adjacent to the said docks, wharfs and terminals, and each of them, for the purpose of causing said Indies Terminal Company and General Steamship Company and their respective em-[fol. 203] ployees to refuse to perform services for and to deliver goods to plaintiff because of a labor dispute between plaintiff and defendants;

That on June 21, 1946, an order to show cause why said respondent should not be punished for contempt as charged in said affidavit was issued and served upon respondent, returnable July 12, 1946;

That on the above date, or subsequent thereto, respondent appeared in response to said order to show cause and the hearing thereon was continued by stipulation and said restraining order was continued in force to and including the date of August 12, 1946, and thereafter, and it is still in effect;

Upon the calling of the matter of contempt on August 12, 1946, the respondent appearing in person and by attor-

ney in Department 30 of this court, witnesses were sworn and evidence, both documentary and oral, was received in support of the allegations contained in said affidavit; thereupon both parties rested, the respondent electing to present no evidence in his own behalf; thereupon by stipulation the matter was continued to September 17, 1946, and on that date again continued to September 20, 1946, for the purpose of entering the decision of the court, and in the meantime the respective parties by stipulation were permitted to file written arguments and citation of authorities, and these were filed in accordance therewith; the court having considered the evidence and the law presented, and being fully advised therein, now presents his findings, judgment and decision, and commitment therein:

[fol. 204] FINDINGS, JUDGMENT AND COMMITMENT

Upon the evidence and the stipulation of the parties, the court now finds that prior to and on May 24, 1946, and thereafter to and including the dates of the acts of the respondent hereinafter set forth, the said respondent Irv Magison, together with Syl Sylvane, Gay Lillefloren, Russell Marks, Homer Ford and other members of the defendant union Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, together with other persons and organizations named in said complaint and in said affidavit, began and continued:

(a) To cause the employees of Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their respective employers above named, in connection with the delivery of goods to plaintiff, for the purpose of causing and coercing the said Indies Terminal Company and General Steamship Company, and each of them, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with plaintiff because of a labor dispute between plaintiff and defendants;

(b) To cause said Indies Terminal Company and General Steamship Company, and each of them, and their respective employees, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Indies Terminal Company and General Steamship Company, and their respective docks, wharfs and terminals, for the purpose of causing employees of said Indies Terminal Company

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and General Steamship Company, and each of them, to refuse to perform services for their said respective employers [fol. 205] because of a labor dispute between plaintiff and defendants;

The court further finds that on or about June 11, 1946, respondent Irv Magison and Russell Marks, for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, called upon Mr. Harry Reese, pier superintendent for General Steamship Company, at his office at the pier and said company at Los Angeles harbor, and told said superintendent that if the coffee belonging to Farmer Bros. then being upon the said pier, or dock, was permitted to be delivered to Farmer Bros. that the entire dock would be picketed; that said dock is 1000 feet long and does a general shipping business;

The court further finds that on June 13, 1946, the said Irv Magison did the following acts for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

On June 13, 1946, the Sheriff of Los Angeles County, State of California, appeared at the dock of the General Steamship Company, at Berth 230, at Los Angeles harbor, pursuant to an order of this court issued in an action of claim and delivery brought by plaintiff herein against General Steamship Company for the purpose of receiving 1500 sacks of coffee which had arrived there from South America consigned to plaintiff; immediately upon his appearance Russell Marks drove up in his car and brought several pickets with him; these men immediately put on arm bands and established a picket line at the entrance to the dock warehouse in front of which plaintiff's trucks were drawn up; Russell Marks then drove away; respondent Irv Magison appeared at approximately the same time, together [fol. 206] with Homer Ford and Gay Lillefloren, and the three of them conversed together; at that time Homer Ford had stated to the representative of plaintiff that the latter was not going to get the coffee, and when said representative replied that they already had two or three trucks loaded, said Ford stated, "Well, you are not going to get all of it." This conversation took place in the presence of respondent Irv Magison and Gay Lillefloren. The said pickets continued to walk up and down in front of the dock entrance and between it and the trucks during the entire time that the truck was being loaded and while the 12 armed Deputy

Sheriffs were present and in charge of the seizure of the coffee. During this time there was a ship loading at the same dock with merchandise other than that of the plaintiff herein and there were 5 gangs of longshoremen engaged in that work, each gang consisting of approximately 20 to 22 men;

Immediately upon the formation of the picket line, as above indicated, all of these 5 gangs of longshoremen slowed down in their work and stood around and waited for the arrival of their business agent for instructions; upon the arrival of the business agent they immediately stopped work, about 10 o'clock in the morning, and did not resume until 11:30 o'clock that morning; the men working as checkers also stopped work; the merchandise that was being loaded by these gangs was cotton, in which plaintiff herein had no interest whatsoever;

After the Sheriff had loaded all the coffee at the General Steamship Company dock, he then moved with his deputies and trucks to the dock of the Indies Terminal Company where a shipment of coffee belonging to plaintiff awaited delivery to plaintiff; at this dock respondent Irv Magison, and also Homer Ford and Russell Marks, appeared, to-
[fol. 207] gether with the same pickets that had been at the General Steamship Company dock, and the picket line was immediately established in a similar manner to that at the General Steamship Company dock; the pickets continued to walk up and down in the picket line during all the time in which the Sheriff and his deputies were seizing the coffee, and respondent Irv Magison, together with Homer Ford and Russell Marks, also remained there during this period; while this was going on plaintiff's representative had a conversation with respondent Magison, together with said Ford and Marks, in which they informed said representative that they, the said Magison, Ford and Marks, had the power to stop plaintiff from getting its own merchandise and that they were going ahead and exercise that power; the workmen employed by plaintiff at the request of the Sheriff to do the actual work of loading the coffee on behalf of the Sheriff continued to load said coffee on to said trucks and the armed Deputy Sheriffs remained there until all the coffee was loaded, whereupon they left and said pickets and said Magison, Ford and Marks also left;

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That because of the said acts of said Irv Magison, in concert with Homer Ford and Russell Marks, and the other persons and organizations hereinabove set forth, the said Indies Terminal Company and General Steamship Company, and each of them, refused to perform any services for or to deliver any goods to plaintiff, and said acts of said Irv Magison further resulted in a refusal by employees of said Indies Terminal Company and General Steamship Company, and each of them, to handle any goods for their employer intended for delivery to plaintiff, and to perform services for their said respective employers in connection with the handling of such goods for delivery to plaintiff or [fol. 208] to permit plaintiff to take its own goods upon demand therefor.

Upon the foregoing findings of fact, the court concludes and adjudges that the respondent Irv Magison has wilfully disobeyed a lawful order of the court, to-wit: the provisions of the temporary restraining order hereinabove set forth, and that said respondent is guilty of contempt as defined in Section 1209, subsection 5 of the Code of Civil Procedure, by reason of said acts, as found hereinabove.

Now, therefore, upon this 20th day of September, 1946, the respondent having personally appeared in the presence of the court together with his counsel,

It is adjudged that Irv Magison is guilty of contempt of court as hereinabove found and determined and that he be committed to the County Jail for the period of three (3) days on each of said two counts, and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each of said two counts; provided, however, that said terms shall be served concurrently and, provided further, that a payment of the said fine on either of the counts shall work a discharge of the fine on the other count as well as the one upon which payment is made.

It is the further order of this court that the said Irv Magison be, and he is hereby committed to the custody of the Sheriff of Los Angeles County, State of California, and said officer is hereby instructed to carry this order into effect.

September 20, 1946.

Jess E. Stephens, Judge.

[File endorsement omitted.]

[fol. 209] IN SUPERIOR COURT OF LOS ANGELES COUNTY

JUDGMENT AND WARRANT OF COMMITMENT ON CONVICTION OF CONTEMPT OF COURT OF GAY LILLEFLOREN—September 17, 1946

Be it remembered that on May 21, 1946, the above named plaintiff commenced an action against the above named defendants, including respondent Gay Lillefloren, seeking to secure injunctive relief against the acts of the defendants alleged therein as violative and in contravention of the rights of plaintiff herein and of the so-called "Hot Cargo and Secondary Boycott Act" enacted by the Legislature of California in the 1941 session and later approved by the people under the referendum law in the general election of November, 1942; that the respondent Gay Lillefloren is and was at the times mentioned herein the agent and representative of defendant Wholesale Delivery Drivers and Salesmen's Union, Local No. 848;

That on May 22, 1946 upon application of the plaintiff, supported by verified complaint, the court signed and issued an order to show cause in the usual form and a temporary restraining order containing, among others, the following provisions:

"Upon reading the verified Complaint and Affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the Court that this is a proper case for the issuance of a Temporary Restraining Order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

[fol. 210] It Is Hereby Ordered that defendants, and each of them, be and appear before the above named court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in

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concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, [fol. 211] The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agrement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.

And It Is Further Ordered that copies of the Complaint, Summons, the within Order to Show Cause and Temporary Injunction, together with plaintiff's Points and Authori-

ties and Affidavit, be served upon defendants on or before May 25, 1946.

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, Judge of the Superior Court."

[fol. 212] That on May 24, 1946, a copy of said temporary restraining order and order to show cause was regularly served upon respondent Gay Lillefloren and he has been aware of its contents since said date;

That on June 6, 1946, one Roy Farmer, president of plaintiff corporation, filed his affidavit for contempt with petition for an order to show cause wherein, among other things, he charged that respondent Gay Lillefloren had engaged in combinations and agreements with officers and representatives of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, and with Syl Sylvane, and with other persons and organizations named in said complaint, to cause employees of the Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing or coercing said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing or coercing said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with the plaintiff because of a labor dispute between plaintiff and defendants; and to cause said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and the employees of each of them, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, and their respective docks, wharfs, and terminals, for the purpose of causing the employees of said companies, [fol. 213] and each of them, to refuse to perform services for their said respective employers; and to maintain pickets

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upon and adjacent to the said docks, wharfs, and terminals, and each of them, for the purpose of causing said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and their respective employees to refuse to perform services for and to deliver goods to plaintiff because of a labor dispute between plaintiff and defendants;

That on June 7, 1946, an order to show cause why said respondent should not be punished for contempt as charged in said affidavit was issued and served upon respondent, returnable June 21, 1946;

That on July 8, 1946, respondent filed his verified answer to said charge, denying in general terms the allegations set forth in said affidavit; that on July 21, 1946, at a further hearing upon said order to show cause, same was continued by stipulation and said restraining order was continued in force to and including the date of August 12, 1946, and thereafter, and it is still in effect;

Upon the calling of the matter of contempt on August 12, 1946, the respondent appearing in person and by attorney in Department 30 of this court, witnesses were sworn and evidence, both documentary and oral, was received in support of the allegations contained in said affidavit; thereupon both parties rested, the respondent electing to present no evidence in his own behalf; thereupon by stipulation the matter was continued to September 17, 1946, for the purpose of entering the decision of the court, and in the meantime the respective parties by stipulation were permitted to file written arguments and citation of authorities, [fol. 214] and these were filed in accordance therewith; the court having considered the evidence, and the law presented, and being fully advised therein, now presents his findings, judgment and decision, and commitment therein:

### Findings, Judgment, and Commitment

Upon the evidence and the stipulation of the parties, the court now finds that prior to and on May 24, 1946, and thereafter to and including the dates of the acts of the respondent hereinafter set forth, the said respondent Gay Lillefloren, together with Syl Sylvane, and other members of defendant union Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, together with other persons and

organizations named in said complaint and in said affidavit, began and continued

(a) To cause the employees of Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their respective employers above named, in connection with the delivery of goods to plaintiff, for the purpose of causing and coercing the said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with plaintiff because of a labor dispute between plaintiff and defendants;

(b) To cause said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, and their respective employees, to refuse to perform services and to deliver goods to plaintiff [fol. 215] by threat of picketing said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and their respective docks, wharfs and terminals, for the purpose of causing employees of said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, to refuse to perform services for their said respective employers because of a labor dispute between plaintiff and defendants;

The court further finds that on June 4, 1946, the said Gay Lillefloren did the following acts for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

On June 4, 1946, plaintiff's representative appeared at the dock of the General Steamship Company, at Berth 230, at Los Angeles Harbor, for the purpose of receiving 1500 sacks of coffee which had arrived there from South America; immediately upon his appearance a man named Bauer ran to a telephone and as a result thereof respondent Lillefloren appeared in a few moments, jumped up on the dock and presented his card to plaintiff's representative and to Mr. Harry Reese, the dock superintendent, said card containing the designation "Representative, Wholesale Delivery Drivers & Salesmen's Union Local 848." He was accompanied also by another picket in addition to Mr.

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Bauer, and respondent Lillefloren announced "This is a picket line right here, right now, and nobody is to touch this coffee or take it." Plaintiff's representative then announced that he and his assistants would take the coffee themselves, giving their receipt for it, and the superintendent of the dock thereupon assented to this procedure [fol. 216] and thereupon respondent Lillefloren said "If you let these people take the coffee off the dock, I will get more pickets and we will picket the whole dock and you won't do any business here"; thereupon Mr. Reese, the dock superintendent, in the presence of respondent Lillefloren and plaintiff's representative said "Well, you have got me on the spot; for one customer I can't tie up my whole dock; I have a ship coming in tomorrow. I am afraid I will have to tell you fellows you can't touch your stuff";

Thereupon plaintiff's representatives left with their truck and went to the dock of the Indies Terminal Company, also located at Los Angeles harbor; respondent Lillefloren followed them there and brought the same pickets with him; these pickets had bands on their arms reading "A.F.L. Teamsters Picket"; they paced up and down in front of the opening of plaintiff's truck; plaintiff's representative presented his papers for delivery of 769 sacks of coffee which were on the dock ready for delivery to plaintiff; the dock superintendent stated in the presence of respondent Lillefloren and plaintiff's representative that being election day they did not have a checker on the job but would call for one if they would come back at one o'clock; plaintiff's representative then left and Lillefloren then said "and we will be back at one o'clock too"; at one o'clock plaintiff's representative appeared and likewise respondent Lillefloren; the assistant manager of the dock assigned one Henry Ambrossi as checker, whereupon Lillefloren directed Mr. Bauer and the other picket to put on their picket bands and they and respondent Lillefloren walked up and down in front of the truck, and respondent Lillefloren announced "This is a picket line." "Tell them not to touch it"; Ambrossi stated that he was [fol. 217] a member of the C.I.O. Union and would call the secretary; he returned from the call and announced in the presence of respondent Lillefloren and plaintiff's representative that he would not check the coffee and plaintiff could not have it; thereupon Mr. Ralph Bennett, the wharf manager, was sent for and plaintiff's representative said to

the latter "Well, if the union men won't check the coffee out to us, will you take my receipt for the coffee in the name of Farmer Brothers?"; the assistant manager thereupon said "Yes, we will do that"; thereupon respondent Lillefloren spoke up and said "If you let these fellows have these coffee sacks, take one sack off this dock, I will call San Pedro for reinforcements and we will tie up your whole dock; you won't get any freight on or off of it." Thereupon the wharf manager, in the presence of plaintiff's representative and respondent Lillefloren, said "Well, under those circumstances we do not dare let you take the stuff because we can't tie up our whole dock; I have got a ship due in tomorrow morning, if those fellows come in here and I order 4 or 5 gangs of longshoremen over here, I won't get a bit of stuff off the ship. You are entitled to it, its yours, but I can't let you take it." Thereupon plaintiff's representatives left without receiving their coffee;

On June 6, 1946, plaintiff's representative went to the dock of the Outer Harbor Dock & Wharf Company at San Pedro, in Los Angeles harbor, with assistants and trucks, for the purpose of obtaining 4000 sacks of green coffee belonging to plaintiff and awaiting delivery at said dock; upon their appearance there a man named John Boyd Rogers and Mr. Bauer, above mentioned, got out of a car which was parked there and ran to a telephone; [fol. 218] in a few minutes respondent Lillefloren appeared, placed arm bands on Bauer and Rogers; the three of them thereupon stood in front of and on each side of the truck and respondent Lillefloren said "This is a picket line right here; no body is to go through it and nobody is to touch this coffee." Plaintiff's representative had already placed 10 sacks of coffee in his truck and thereupon respondent Lillefloren brought one Eversole to the spot and the latter said "What do you mean going on the dock, taking merchandise without authority. I am chief checker here and you have no right to take anything on this dock without authority." Plaintiff's representative then said "Your head office has assigned Mr. Bill Glassey here to check it to me and he is checking it right now." Thereupon Eversole, in the presence of respondent Lillefloren and plaintiff's representative, said "Glassey, do you have this job?" and the latter said "Yes, the office sent me out." Eversole then said "Well there is a picket line, you don't

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dare touch it." Thereupon Eversole said "Do you mind if Glassey and I talk to our secretary, will you quit loading until I get back?" Plaintiff's representative assented and upon Eversole's return he said "I am on the spot and in trouble, I am a C.I.O. man and I don't want to cross an A.F.L. picket line, and if I do I will get in trouble." Eversole then left and returned, bringing another man with him and said "This is the secretary of my local." After some conversation between these two, Eversole stated to plaintiff's representative, in the presence of respondent Lillefloren that plaintiff could not touch the coffee and that plaintiff's representative would have to take back the 10 sacks out of the truck; thereupon one William Forbes, the dock superintendent, was called and the latter said "Well we are common carriers; these [fol. 219] people have their papers and they are entitled to their merchandise; I don't know how we can stop them taking it." Plaintiff's representative then said "All right, we will take it ourselves." Thereupon Lillefloren said "Well if you touch that, if you let these fellows take this coffee away from here, or any part of it, I will picket the whole dock; I will stop all work here." Thereupon the dock superintendent said "Well, I can't do anything if that is the situation; I can't let you fellows take it." Thereupon plaintiff's representative offered to take it on his own responsibility and give a receipt for it and in answer thereto, in the presence of respondent Lillefloren, the dock superintendent, said "No, I can't tie my dock up; I can't work a ship if they do that." He then requested plaintiff's representative to remove the sacks from the truck and place them back on the dock and upon the latter's refusal to do this, respondent Lillefloren and one of his pickets took a hand truck and removed the sacks from the truck and then placed them on the wharf.

Immediately following this, plaintiff's representative said "Mr. Bauer, I would like to know your first name," and to the other picket "I would like to know your name," and respondent Lillefloren said "You needn't tell who you are, what do you want to know for"; plaintiff's representative then said "I have to make two reports; I have to make one report to the client and tell him who stopped it, and I have to make another report to the court about this injunction violation, which I think is a violation." Respondent Lillefloren then said "You fellows needn't tell

who you are." He then turned to plaintiff's representative and said "You can say, if anyone wants to know who stopped you, that I stopped you; you can tell that [fol. 220] to the judge if you want to; I am the man thats responsible and not these fellows." Thereupon plaintiff's representative left without getting their coffee;

Immediately thereafter, and on the same day, June 6, 1946, plaintiff's representative, and his assistants and trucks went to the dock of the General Steamship company, at Los Angeles harbor, and when they reached there respondent Lillefloren appeared with the same pickets, placed them in front of the truck and stated that it was a picket line and that he would forbid anyone to take the coffee. Thereupon the dock superintendent, Mr. Reese, was sent for and told plaintiff's representative that he could take the coffee by giving a receipt for it. Mr. Reese also said "Our companies have been served with an injunction and we are not going to violate it; it is your stuff and you are entitled to it." Respondent Lillefloren then announced that it was a picket line and that he would picket the whole dock if Mr. Reese allowed plaintiff's representative to take the coffee, that he would send for more men and stop all operations on the dock. Thereupon Mr. Reese said "Under those circumstances I can't work my dock and I will have to reverse myself, you fellows can't have your coffee." Plaintiff's representative then left without obtaining the coffee;

Plaintiff's representative, with his assistants and trucks, then on the same day, June 6, 1946, returned to the Indies Terminal Company's dock and backed up their trucks ready to receive coffee belonging to the plaintiff which awaited them there; thereupon respondent Syl Sylvane appeared with one of the same pickets who had accompanied respondent Lillenfloren at the Outer Harbor Dock & Wharf Company dock and respondent Syl Sylvane [fol. 221] then announced that the place was being picketed by the Teamsters Union and said "I will not allow anybody to take the coffee." Mr. Bork, the chief clerk at the dock, said "You fellows take your coffee." Thereupon Mr. Ralph Bennett, the dock superintendent, and Mr. Murray, his assistant, appeared. Plaintiff's representative then said to Mr. Bennett "Will you ask this fellow who he is, he says we can't take our merchandise." Thereupon respondent Syl Sylvane said "I won't tell you who I am,

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but this dock is being picketed, and these people have been declared unfair by our union and they can't touch the stuff." Thereupon the man who had been assigned as checker refused to let plaintiff's representative have the coffee. Plaintiff's representative then said "This isn't a picket line anyway, you haven't any banners here, you haven't any signs" and respondent Sylvane said "Oh, if thats what you want I will go and get you some." Thereupon he drove away in a car and came back in a few minutes with two signs reading: "Unfair to Teamsters Union 848." At this time respondent Lillenfloren appeared and remained a few minutes; respondent Sylvane then began shouting in a loud voice and Mr. Bennett, the dock manager, said: "You can't behave this way around here, this is private property, get off the dock." Thereupon respondent Sylvane said "This is a public street, I can picket from here." Whereupon respondent Lillefloren joined him and they walked up and down with their signs, respondent Lillefloren remaining about ten minutes. Thereafter plaintiff's representative said to Mr. Bennett, the dock superintendent, "Well we aren't going to observe this picket line, we will take our stuff even though your checker won't give it to us." Mr. Bennett then said "All right, you [fol. 222] can have it. We haven't any good legal reason why you can't take it." Thereupon respondent Sylvane announced that if plaintiff's representative took the coffee he would picket the whole dock with more men and stop all operation, not only those of plaintiff but the operations of everybody else. Thereupon superintendent Bennett said "Well we can't tie up all our operations; today is a holiday, not many men working, but we have two ships coming in tomorrow; we will have to reverse our statement to you that you can take it; you can't take it." He thereupon ordered his assistant Mr. Bork to close the door, and plaintiff's representative drove away without receiving the coffee.

That because of the said acts of said Gay Lillefloren in concert with Syl Sylvane, and the other persons and organizations hereinabove set forth, the said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, refuse to perform any services for or to deliver any goods to plaintiff, and said acts of said Gay Lillefloren further

resulted in a refusal by employees of said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, to handle any goods for their employer intended for delivery to plaintiff, and to perform services for their said respective employers in connection with the handling of such goods for delivery to plaintiff, or to permit plaintiff to take its own goods upon demand therefor.

Upon the foregoing findings of fact, the court concludes and adjudges that the respondent Gay Lillenfloren has wilfully disobeyed a lawful order of the court, to-wit: the provisions of the temporary restraining order herein- [fol. 223] above set forth, and that said respondent is guilty of contempt as defined in Section 1209, subsection 5 of the Code of Civil Procedure, by reason of said acts, as found hereinabove.

Now, therefore, upon this 17th day of September, 1946, the respondent having personally appeared in the presence of the court together with his counsel.

It is adjudged that said Gay Lillefloren is guilty of contempt of court as hereinabove found and determined and that he be committed to the County Jail for the period of five (5) days on each of said four counts and that in addition thereto he pay a fine of $400 on each of said four counts; provided, however, that said terms shall be served concurrently and, provided further, that payment of the said fine on any one of the counts shall work a discharge of the fine on each of the other counts as well as the one upon which payment is made.

It is the further order of this court that the said Gay Lillenfloren be, and he is hereby committed to the custody of the sheriff of Los Angeles County, State of California, and said officer be hereby instructed to carry this order into effect.

September 17, 1946.

Jess E. Stephens, Judge.

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[fol. 224] JUDGMENT AND WARRANT OF COMMITMENT ON CONVICTION OF CONTEMPT OF COURT OF SYL SYLVANE— September 17, 1946

Be it remembered that on May 21, 1946, the above named plaintiff commenced an action against the above named de-

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fendants, including respondent Syl Sylvane, seeking to secure injunctive relief against the acts of the defendants alleged therein as violative and in contravention of the rights of plaintiff herein and of the so-called "Hot Cargo and Secondary Boycott Act" enacted by the Legislature of California in the 1941 session and later approved by the people under the referendum law in the general election of November, 1942; that the respondent Syl Sylvane is and was a member of and acting for defendants Wholesale Delivery Drivers and Salesmen's Union, Local No. 848;

That on May 22, 1946, upon application of the plaintiff, supported by verified complaint, the court signed and issued an order to show cause in the usual form and a temporary restraining order containing, among others, the following provisions:

"Upon reading the verified Complaint and Affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the Court that this is a proper case for the issuance of a Temporary Restraining Order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

It Is Hereby Ordered that defendants, and each of them, be and appear before the above named court in the court [fol. 225] room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the 31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this Order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Spring & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer, supplier or carrier of plaintiff, to cease performing any services for said employers, or any of [fol. 226] them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers or any of them, to refrain from doing b-siness with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.

And It Is Further Ordered that copies of the Complaint, Summons, the within Order to Show Cause and Temporary Injunction, together with plaintiff's Points and Authorities and Affidavit, be served upon defendants on or before May 25, 1946.

Dated at Los Angeles, California, this 22nd day of May, 1946.

Willis, Judge of the Superior Court."

That on May 24, 1946, a copy of said temporary restrain- order and order to show cause was regularly served upon

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respondent Syl Sylvane and he has been aware of its contents since that date;

That on June 6, 1946, one Roy Farmer, President of plaintiff corporation, filed his affidavit for contempt with [fol. 227] petition for an order to show cause wherein, among other things, he charged that respondent Syl Sylvane had engaged in combinations and agreements with officers and representatives of Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, and with Gay Lillefloren, and with other persons and organizations named in said complaint, to cause employees of the Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their employer in connection with the delivery of goods to plaintiff, for the purpose of causing or coercing said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with the plaintiff because of a labor dispute between plaintiff and defendants; and to cause said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and the employees of each of them, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and each of them, and their respective docks, wharfs and terminals, for the purpose of causing the employees of said companies, and each of them, to refuse to perform services for their said respective employers; and to maintain pickets upon and adjacent to the said docks, wharfs and terminals, and each of them, for the purpose of causing said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and their respective employees, to refuse to perform services for and to deliver goods to plaintiff because of a labor dispute between plaintiff and defendants;

[fol. 228] That on June 7, 1946, an order to show cause why said respondent should not be punished for contempt as charged in said affidavit was issued and served upon respondent, returnable June 21, 1946;

That on July 23, 1946, respondent filed his verified answer to said charge, denying in general terms the allegations set

forth in said affidavit; that on July 21, 1946, at a further hearing upon said order to show cause, same was continued by stipulation and said restraining order was continued in force to and including the date of August 12, 1946, and thereafter, and it is still in effect;

Upon the calling of the matter of contempt on August 12, 1946, the respondent appearing in person and by attorney in Department 30 of this court, witnesses were sworn and evidence, both documentary and oral, was received in support of the allegations contained in said affidavit; thereupon both parties rested, the respondent electing to present no evidence in his own behalf; thereupon by stipulation the matter was continued to September 17, 1946, for the purpose of entering the decision of the court, and in the meantime the respective parties by stipulation were permitted to file written arguments and citations of authorities, and these were filed in accordance therewith; the court having considered the evidence and the law presented, and being fully advised therein, now presents his findings, judgment and decision and commitment therein:

FINDINGS, JUDGMENT AND COMMITMENT

Upon the evidence and the stipulation of the parties, the court now finds that prior to and on May 24, 1946, and thereafter to and including the dates of the acts of the respondent hereinafter set forth, the said respondent Syl Sylvane, [fol. 229] together with Gay Lillefloren and other members of defendant union Wholesale Delivery Drivers and Salesmen's Union, Local No. 848, together with other persons and organizations named in said complaint and in said affidavit, began and continued

(a) To cause the employees of Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company to refuse to handle any goods for delivery to plaintiff and to cease performing any services for their respective employers above named, in connection with the delivery of goods to plaintiff, for the purpose of causing and coercing the said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and each of them, to refuse to handle and deliver any goods to plaintiff and to refrain from doing business with plaintiff because of a labor dispute between plaintiff and defendants;

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(b) To cause said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and each of them, and their respective employees, to refuse to perform services and to deliver goods to plaintiff by threat of picketing said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and their respective docks, wharfs and terminals, for the purpose of causing employees of said Outer Harbor Dock & Wharf Company, Indies Terminal Company and General Steamship Company, and each of them, to refuse to perform services for their respective employers because of a labor dispute between plaintiff and defendants;

The court further finds that on June 4, 1946, the said Gay Lillefloren did the following acts for the purpose of [fol. 230] carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

On June 4, 1946, plaintiff's representative appeared at the dock of the General Steamship Company, at Berth 230, at Los Angeles Harbor, for the purpose of receiving 1500 sacks of coffee which had arrived there from South America; immediately upon his appearance a man named Bauer ran to a telephone and as a result thereof respondent Lillefloren appeared in a few moments, jumped up on the dock and presented his card to plaintiff's representative and to Mr. Harry Reese, the dock superintendent, said card containing the designation "Representative, Wholesale Delivery Drivers & Salesmen's Union Local 848." He was accompanied also by another picket in addition to Mr. Bauer, and respondent Lillefloren announced, "This is a picket line right here, right now, and nobody is to touch this coffee or take it." Plaintiff's representative then announced that he and his assistants would take the coffee themselves, giving their receipt for it, and the superintendent of the dock thereupon assented to this procedure and thereupon respondent Lillefloren said, "If you let these people take the coffee off the dock, I will get more pickets and we will picket the whole dock and you won't do any business here"; thereupon Mr. Reese, the dock superintendent, in the presence of respondent Lillefloren and plaintiff's representative, said "Well, you have got me on the spot; for one customer I can't tie up my whole dock; I have

a ship coming in tomorrow. I am afraid I will have to tell you fellows you can't touch your stuff";

Thereupon plaintiff's representatives left with their truck and went to the dock of the Indies Terminal Company, also located at Los Angeles harbor; respondent Lillefloren [fol. 231] followed them there and brought the same pickets with him; these pickets had bands on their arms reading "A. F. L. Teamsters Picket"; they paced up and down in front of the opening of plaintiff's truck; plaintiff's representative presented his papers for delivery of 769 sacks of coffee which were on the dock ready for delivery to plaintiff; the dock superintendent stated in the presence of respondent Lillefloren and plaintiff's representative that being election day they did not have a checker on the job but would call for one if they would come back at one o'clock; plaintiff's representative then left and Lillefloren then said, "and we will be back at one o'clock, too"; at one o'clock plaintiff's representative appeared and likewise respondent Lillefloren; the assistant manager of the dock assigned one Henry Ambrossi, a checker, whereupon Lillefloren directed Mr. Bauer and the other picket to put on their picket bands and they and respondent Lillefloren walked up and down in front of the truck, and respondent Lillefloren announced "This is a picket line"; "Tell them not to touch it"; Ambrossi stated that he was a member of the C. I. O. Union and would call the secretary; he returned from the call and announced in the presence of respondent Lillefloren and plaintiff's representative that he would not check the coffee and plaintiff could not have it; thereupon Mr. Ralph Bennett, the wharf manager, was sent for and plaintiff's representative said to the latter, "Well, if the union men won't check the coffee out to us, will you take my receipt for the coffee in the name of Farmer Brothers?"; The assistant manager thereupon said, "Yes, we will do that"; thereupon respondent Lillefloren spoke up and said, "If you let these fellows have these coffee sacks, take one sack off this dock, I will call [fol. 232] San Pedro for reinforcements and we will tie up your whole dock; you won't get any freight on or off of it." Thereupon the wharf manager, in the presence of plaintiff's representative and respondent Lillefloren, said, "Well, under those circumstances we do not dare let you take the stuff because we can't tie up our whole dock; I have got a ship due in tomorrow morning, if those fellows come in here

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and I order 4 or 5 gangs of longshoremen over here, I won't get a bit of stuff off the ship. You are entitled to it, its yours, but I can't let you take it." Thereupon plaintiff's representatives left without receiving their coffee;

On June 6, 1946, plaintiff's representative went to the dock of the Outer Harbor Dock & Wharf Company at San Pedro, in Los Angeles Harbor, with assistants and trucks, for the purpose of obtaining 4000 sacks of green coffee belonging to plaintiff and awaiting delivery at said dock; upon their appearance there a man named John Boyd Rogers and Mr. Bauer, above mentioned, got out of a car which was parked there and ran to a telephone; in a few minutes respondent Lillefloren appeared, placed arm bands on Bauer and Rogers; the three of them thereupon stood in front of and on each side of the truck and respondent Lillefloren said "This is a picket line right here; nobody is to go through it and nobody is to touch this coffee." Plaintiff's representative had already placed 10 sacks of coffee in his truck and thereupon respondent Lillenfloren brought one Eversole to the spot and the latter said "What do you mean going on the dock, taking merchandise without authority. I am chief checker here and you have no right to take anything on this dock without authority." Plaintiff's representative then said "Your head office has assigned Mr. Bill [fol. 233] Glassey here to check it to me and he is checking it right now." Thereupon Eversole, in the presence of respondent Lillefloren and plaintiff's representative, said "Glassey, do you have this job?" and the latter said "Yes, the office sent me out." Eversole then said "Well there is a picket line, you don't dare touch it." Thereupon Eversole said "Do you mind if Glassey and I talk to our secretary, will you quit loading until I get back?" Plaintiff's representative assented and upon Eversole's return he said "I am on the spot and in trouble, I am a C.I.O. man and I don't want to cross an A.F.L. picket line, and if I do I will get in trouble." Eversole then left and returned, bringing another man with him and said "This is the secretary of my local." After some conversation between these two, Eversole stated to plaintiff's representative, in the presence of respondent Lillefloren that plaintiff could not touch the coffee and that plaintiff's representative would have to take back the 10 sacks out of the truck; thereupon one William Forbes, the dock superintendent, was called and the latter said "Well

we are common carriers; these people have their papers and they are entitled to their merchandise; I don't know how we can stop them taking it." Plaintiff's representatives then said "All right, we will take it ourselves." Thereupon Lillefloren said "Well if you touch that, if you let these fellows take this coffee away from here, or any part of it, I will picket the whole dock; I will stop all work here." Thereupon the dock superintendent said "Well, I can't do anything if that is the situation; I can't let you fellows take it." Thereupon plaintiff's representative offered to take it on his own responsibility and give a receipt for it and in answer thereto, in the presence of respondent Lillefloren, the dock [fol. 234] superintendent said "No, I can't tie my dock up; I can't work a ship if they do that." He then requested plaintiff's representative to remove the sacks from the truck and place them back on the dock and upon the latter's refusal to do this, respondent Lillefloren and one of his pickets took a hand truck and removed the sacks from the truck and then placed them on the wharf.

Immediately following this, plaintiff's representative said "Mr. Bauer, I would like to know your first name," and to the other picket "I would like to know your name," and respondent Lillefloren said "You needn't tell who you are, what do you *want* to know for"; plaintiff's representative then said "I have to make two reports; I have to make one report to the client and tell him who stopped it, and I have to make another report to the court about this injunction violation, which I think is a violation." Respondent Lillefloren then said "You fellows needn't tell who you are." He then turned to plaintiff's representative and said "You can say, if anyone wants to know who stopped you, that I stopped you; you can tell that to the judge if you want to; I am the man that's responsible and not these fellows." Thereupon plaintiff's representative left without getting their coffee;

Immediately thereafter, and on the same day, June 6, 1946, plaintiff's representative, with his assistants and trucks went to the dock of the General Steamship Company, at Los Angeles harbor, and when they reached there respondent Lillefloren appeared with the same pickets, placed them in front of the truck and stated that it was a picket line and that he would forbid anyone to take the coffee. There- [fol. 235] upon the dock superintendent, Mr. Reese, was

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sent for and told plaintiff's representative that he could take the coffee by giving a receipt for it. Mr. Reese also said "Our companies have been served with an injunction and we are not going to violate it; it is your stuff and you are entitled to it." Respondent Lillefloren then announced that it was a picket line and that he would picket the whole dock if Mr. Reese allowed plaintiff's representative to take the coffee, that he would send for more men and stop all operations on the dock. Thereupon Mr. Reese said "Under those circumstances I can't work my dock and I will have to reverse myself, you fellows can't have your coffee." Plaintiff's representative then left without obtaining the coffee;

The court further finds that on June 6, 1946, the said Syl Sylvane did the following acts for the purpose of carrying out and effectuating said combination and agreements hereinabove referred to, to-wit:

Plaintiff's representative, with his assistants and trucks after leaving the dock of the General Steamship Company on June 6, 1946, returned to the Indies Terminal Company's dock and backed up their trucks ready to receive coffee belonging to the plaintiff which awaited them there; thereupon respondent Syl Sylvane appeared with one of the same pickets who had accompanied respondent Lillefloren at the Outer Harbor Dock & Wharf Company dock, and respondent Syl Sylvane then announced that the place was being picketed by the Teamsters Union and said "I will not allow anybody to take [fol. 236] the coffee." Mr. Bork, the chief clerk at the dock, said "You fellows take your coffee." Thereupon Mr. Ralph Bennett, the dock superintendent, and Mr. Murray, his assistant, appeared. Plaintiff's representative then said to Mr. Bennett "Will you ask this fellow who he is, he says we can't take our merchandise." Thereupon respondent Syl Sylvane said "I won't tell you who I am, but this dock is being picketed, and these people have been declared unfair by our union and they can't touch the stuff." Thereupon the man who had been assigned as checker refused to let plaintiff's representative have the coffee. Plaintiff's representative then said "This isn't a picket line anyway, you haven't any banners here, you haven't any signs," and respondent Sylvane said "Oh, if that's what you want I will go and get some." There-

upon he drove away in a car and came back in a few minutes with two signs reading: "Unfair to Teamsters Union 848." At this time respondent Lillefloren appeared and remained a few minutes; respondent Sylvane then began shouting in a loud voice and Mr. Bennett, the dock manager, said: "You can't behave this way around here, this is private property, get off the dock." Thereupon respondent Sylvane said "This is a public street, I can picket from here." Whereupon respondent Lillefloren joined Sylvane and they walked up and down with their signs. Thereafter plaintiff's representative said to Mr. Bennett, the dock superintendent, "Well we aren't going to observe this picket line, we will take our stuff even though your checker won't give it to us." Mr. Bennett then said "All right, you can have it. We haven't any good legal reason why you can't take it." Thereupon respondent Sylvane announced that if plaintiff's represen-[fol. 237] tative took the coffee he would picket the whole dock with more men and stop all operations, not only those of plaintiff but the operations of everybody else. Thereupon superintendent Bennett said "Well we can't tie up all our operations; today is a holiday, not many men working, but we have two ships coming in tomorrow; we will have to reverse our statement to you that you can take it; you can't take it." He thereupon ordered his assistant Mr. Bork to close the door, and plaintiff's representative drove away without receiving the coffee.

That because of the acts of said Syl Sylvane in concert with Gay Lillefloren, and the other persons and organizations hereinabove set forth, the said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, refused to perform any services for or to deliver any goods to plaintiff, and said acts of said Syl Sylvane further resulted in a refusal by employees of said Outer Harbor Dock & Wharf Company, Indies Terminal Company, and General Steamship Company, and each of them, to handle any goods for their employer intended for delivery to plaintiff, and to perform services for their respective employers in connection with the handling of such goods for delivery to plaintiff, or to permit plaintiff to take its own goods upon demand therefor.

Upon the foregoing findings of fact, the court concludes and adjudges that the respondent Syl Sylvane has

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wilfully disobeyed a lawful order of the court, to-wit: the provisions of the temporary restraining order hereinabove set forth, and that said respondent is guilty of contempt as defined in Section 1209, subsection 5, of the Code of Civil Procedure, by reason of said acts, as found hereinabove.

[fol. 238] Now, therefore, upon this 17th day of September, 1946, the respondent having appeared personally in the presence of the court, together with his counsel,

It is adjudged that said Syl Sylvane is guilty of contempt of court as hereinabove found and determined and that he be committed to the County Jail for the period of three (3) days on each of said four counts, and that in addition thereto he pay a fine of two hundred dollars ($200.00) on each of said four counts; provided, however, that said terms shall be served concurrently and, provided further, that payment of the said fine on any one of the counts shall work a discharge of the fine on each of the other counts as well as the one upon which payment is made.

It is the further order of this court that the said Syl Sylvane be, and he is hereby committed to the custody of the sheriff of Los Angeles County, State of California, and said officer is hereby instructed to carry this order into effect.

September 17, 1946.

Jess E. Stephens, Judge.

[File endorsement omitted.]

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[fol. 239] In the Superior Court of the State of California, in and for the County of Los Angeles

Minute Order of September 17, 1946

Trial is resumed from August 15, 1946, with counsel present as before, excepting R. B. Turnbull. Hearing as to defendants Homer Ford, Russell Marks and Irv Magisen is continued to September 20, 1946, at 10:00 A. M. As to other defendants, the matter having been heretofore submitted on August 15, 1946, the court finds Gay *Lilleflore* and Syl Sylvane guilty of contempt of court. It is

ordered that Gay Lillefloren be committed to the County Jail for a period of five days on each of the four counts, and in addition that he pay a fine of $400.00 on each of the four counts; said terms shall run concurrently and the payment of the fine on any account shall work a discharge of the fine on each of the other counts as well as the one upon which payment is made. A stay of execution is granted to October 7, 1946, and defendant is ordered to be present on that date at 10:00 A. M. It is ordered that Syl Sylvane be committed to the County Jail for a period of three days on each of the four counts and that in addition he pay a fine of $200.00 on each of the four counts, said terms to be served concurrently and payment of the fine on any count shall work a discharge on each of the other counts. Stay of execution to October 7, 1946, is granted and defendant is ordered to be present on that date at 10:00 A.M.

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[fol. 240] In the Superior Court of the State of California, in and for the County of Los Angeles

Minute Order of September 20, 1946

Trial is resumed from September 17, 1946, with counsel present as before. As to defendants Gay Lillefloren and Syl Sylvane, the stay of execution which was granted to October 7, 1946, is extended to October 26, 1946. Defendants Homer Ford, Russell Marks and Irv Magisen are found guilty of contempt of court on two counts, having violated the court order of May 2, 1946, and each is sentenced to three days in the County Jail on each count, and to pay a fine of $200.00 on each count; the terms in jail to run concurrently and payment of fine on one count shall work a discharge of the fine on the other count. A stay of execution is granted to October 28, 1946, and defendants are ordered to return to court October 28, 1946, at 10:00 A. M. Memorandum of opinion and judgments and warrants of commitment are signed and filed.

[fols. 241-245] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 246] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IRV MAGISEN, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

RESPONSE OF FARMER BROS. CO., OBJECTIONS TO GRANTING REVIEW, AUTHORITIES IN SUPPORT OF JUDGMENT—Filed October 10, 1946

Comes now the plaintiff Farmer Bros. Co. and for a response to the Petition for Review herein respectfully shows:

The point raised by Petitioners that the order was expended on the date set for hearing and that it had expired by its own limitation is completely answered in the opinion of the trial judge attached hereto, wherein the court said, "on May 22, 1946, a restraining order was issued by the Honorable Henry M. Willis, one of the judges of this court, restraining certain persons, corporations and associations, including these defendants, from performing certain acts therein specified; *it was stipulated that said order was in full force and effect at the times referred to in the affidavit which is the foundation of the charges herein.*" (Emphasis ours.)

[fol. 247] The opinion of Hon. Jess E. Stephens recites the undisputed facts (defendant offered no evidence) and the authorities. It follows:

"In the Superior Court of the State of California, in and for the County of Los Angeles.

Farmer Bros., a corporation, plaintiff, vs. Wholesale Delivery Drivers & Salesmen's Union Local 595, *et al.*, defendants. No. 514,535.

IN THE MATTER OF GAY LILLEFLOREN AND SYL SYLVANE, CHARGED WITH CONTEMPT OF COURT BY THE VIOLATION OF THE ORDER OF THIS COURT DATED MAY 22, 1946.

On May 22, 1946, a restraining order was issued by the Honorable Henry M. Willis, one of the Judges of this court, restraining certain persons, corporations and associations, including these defendants,

from performing certain acts therein specified; it was stipulated that said order was in full force and effect at the time referred to in the affidavit which is the foundation of the charges herein; an affidavit was regularly filed herein, properly sworn to by Roy Farmer, setting forth in great detail the acts of these defendants which, it is charged, constitute a violation or violations of this order and in disregard and contempt thereof; these defendants were regularly served with a copy of the complaint, copy of the summons, the order to show cause and restraining order, points and authorities and affidavits, prior to the acts complained of; at the hearing witnesses were sworn and evidence presented to substantiate all of the matters set forth in the affidavit; defendants were present in court with their counsel throughout the hearing, but elected to put on no evidence.

[fol. 248] I find the allegations set forth in the affidavit to be true. In making this finding it should be noted that the complaint on file herein was referred to in the affidavit and by reference made a part thereof. This reference was obviously only for the purpose of incorporating the general allegations thereof, such as the type and extent of the business of plaintiff, the relationship of the parties, the fact that none of the employees of plaintiff was a member of any of the defendant unions, that the eventual purpose of defendants was to compel the unionization of plaintiff's employees, and perhaps to bring about a closed shop in plaintiff's business and similar generalities. The case was tried upon such theory and evidence was received without objection covering those general allegations. As to any specific acts of defendants in this contempt proceeding, they are all set forth in detail in the affidavit.

In the comments which I am about to make I shall refer to certain acts of defendants but this is not to be taken as an indication that the other allegations in the affidavit are not also found to be true. Defendants rely upon their constitutional right to conduct 'peaceful picketing' in support of their side of a labor dispute.

Extensive briefs and oral arguments were presented by both sides upon the assumption that this proceeding necessarily involves the so-called Hot Cargo Act (Secs. 1131-1136 of the Labor Code).

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Before discussing that act, however, let us examine the order of the Court and the proven acts of defendants herein, for these are the controlling factors, rather than any theories assumed to be applicable thereto. In this connection it must be borne in mind that peaceful picketing [fol. 249] must be for a lawful purpose and by lawful means in order to claim such constitutional protection. (James v. Marinship Corp., 25 Cal. 2d 721.)

By the terms of the order defendants are 'restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts: combining or agreeing to cease performing or to cause any employee of (certain named carriers, suppliers and customers of plaintiff) or any other customer, supplier or carrier of plaintiff to cease performing any services for said employees, or any of them, or causing or agreeing to cause any loss or injury to such employers or any of them, for the purpose of inducing or compelling such employers or any of them to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business—or carrying, shipping, or receiving from or delivering to plaintiff any freight or merchandise for plaintiff; or (b) in any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement; (c) provided however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.'

Now let us consider some of the acts of defendants in the light of this order. Defendants, in combination with each other, and with other persons, caused plaintiff's trucks to be followed to the dock or wharf of the Indies Terminal Co. at the harbor, where a certain shipment of coffee belonging to plaintiff awaited delivery to plaintiff; upon arrival at the dock the person following the truck hurriedly tele- [fol. 250] phoned to defendant Lillefloren; the latter appeared within a few minutes with other men who immediately put on the arm bands of pickets and paraded in front of the door from which the coffee was about to be taken; defendant Lillefloren then notified the superintendent of

the Indies Terminal Co. not to deliver said coffee to plaintiff and notified the employees of Indies Terminal Co. not to check out or deliver said coffee to plaintiffs; the checker thereupon telephoned to someone for instructions and as a result refused to continue the work of checking; at plaintiff's request the superintendent thereupon indicated his willingness to allow plaintiff's representatives to themselves load the coffee upon its truck, giving their receipt therefor; thereupon defendant Lillefloren threatened that if this were done he would throw a picket line around the entire wharf and keep the picket line in effect 24 hours per day. The superintendent then advised defendant Lillefloren that this coffee belonged to plaintiff, that he had no legal right to prevent plaintiff from taking it and that he would be violating his duty if he did so; nevertheless defendant renewed his threat; the superintendent thereupon stated that they had other ships arriving at the wharf, one due within 24 hours, and that he could not risk having their entire business tied up, and for that reason refused to allow plaintiff to take the coffee. Plaintiff's representatives then left with their truck and defendant Lillefloren and his pickets also left. The wharf of the Indies Terminal Co. is 1000 feet long and does a general busines of receiving and shipping cargoes in intrastate, interstate and foreign commerce.

Defendants contend that the eventual purpose of their action was to bring about the unionization of plaintiff's employees—a lawful purpose. But does this make all in-[fol. 251] termediate purposes lawful? The very cases upon which defendants rely hold to the contrary.

The immediate purpose of the above actions of defendants was to prevent plaintiffs from obtaining certain specific bags of coffee to which they were legally entitled; and the immediate and sole purpose of the threat to picket and tie up the entire dock of Indies Terminal Co. was to compel the superintendent of Indies Terminal Co. to refuse to allow plaintiff to take its own coffee to which it was legally and immediately entitled—an unlawful act. Not only was the threat made for that purpose but it succeeded. That it did succeed and that the action of the Indies Terminal Co. in refusing to allow plaintiff to take its own coffee was unlawful is demonstrated by the fact that a few days later by an independent action in this court (the file of which was

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introduced in evidence herein) plaintiff received an order of this court for such delivery and pursuant thereto received delivery when accompanied by 12 armed Deputy Sheriffs.

A similar occurrence took place at the dock of the General Steamship Co. where defendants Lillefloren and Sylvane appeared with their same roving pickets who took their arm bands from their pockets and proceeded to picket so long as plaintiff's representatives were there, prepared to get their coffee and left when the latter left.

Can anyone say that this was peaceful and lawful picketing? Can it really be said that the above actions, including the successful threat of picketing for the purpose of compelling a neutral to do an unlawful act, were the exercise in good faith of free speech for the purpose of advising [fol. 252] the public of the existence of a labor dispute? Finally, can the picketing or threat of picketing of an entire dock 1000 feet long, where the ships of all nations come and go, thus injuring not only the dock company but large numbers of shippers and consumers having no connection whatever with the dispute, possibly be justified upon the theory of the interdependence of economic interest of all engaged in the same industry?

That the defendants have a right to engage in peaceful picketing under proper circumstances and for a lawful purpose is so thoroughly established that the citation of authorities would be superfluous.

But the existence of a right is one thing—its abuse is quite another. The Supreme Court of the United States has said that every case must be determined upon its own circumstances; Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, at 430; Thomas v. Collins, 323 U. S. 516; Schenck v. U. S., 249 U. S. 47, 52; and the great number of cases that have gone to the Supreme Court of the United States as well as to the highest courts of the various states is ample proof of that truism.

It is my opinion that under the general principles of equity, without regard to the so-called Hot Cargo Act, the order of this court, insofar as it applies to the facts in this case (and we are concerned with none other) was amply justified; and I am fully convinced that the acts of defendants, proven beyond a reasonable doubt, constitute a violation of said order.

While the following incident constitutes no part of the contempt, as it was not prohibited by the order, nor did it take place in the presence of the Court, it may be mentioned as throwing some light on the attitude and intention of [fol. 253] defendant Lillefloren in the premises. When he was served with the papers herein mentioned he asked what he was supposed to do with them and was told that he should read them carefully. He then expressed the intention of using them for a purpose for which that type of paper is neither designed nor well adopted, involving their application to a portion of his body in a manner indicating complete disrespect for the contents of the documents.

However, the industry of counsel in presenting arguments and quoting authorities which they in good faith believe sufficient to sustain their respective positions, with relation to the so-called Hot Cargo Act requires some discussion of that subject.

If the provisions of the Act are valid and constitutional, it forms a sufficient basis for the order of the Court which, as I have already indicated, the defendants violated.

It is contended by defendants that that Act is violative of the free speech provisions of both the federal and state constitutions, insofar as it prohibits the secondary boycott and secondary picketing. The right of labor to engage in both of these activities, prior to the enactment of the Act in question, is thoroughly established in this state by decisions of the Supreme Court and District Courts of Appeal. Pierce v. Stablemen's Union, 156 Cal. 70; McKay v. Retail Auto etc. Union, 16 Cal. 2d 311, and cases there cited.

It was said in *In re* Lyons, 27 Cal. App, 2d 293 at 306: 'As we have seen, a secondary boycott peacefully and properly conducted is legal in California under the *constitutional* [fol. 254] *guaranty* of the right of free speech. It is now too late for us to question such right.'

I shall therefore confine my discussion to the question of whether or not the legislature (and the people themselves by referendum) had the power to limit the right of the individual in the face of the emergency confronting the state and nation as recited therein. But before coming to that discussion I would suggest thoughtful application of the wording of the above quotation, viz.: 'secondary boycott peacefully and properly conducted' to the facts as found

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in this case and particularly the hereinabove discussion thereof.

The Act itself contains the following recital:

'This act is enacted for the purpose of preserving tranquility among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State.'

and by the following provision its continuance is limited to the period of the war:

'This chapter shall be in effect until May 1, 1943, and thereafter:

(a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939.

[fol. 255] (b) During any period of war between the United States of America and any foreign power, legally declared to exist.'

The existence of the clear and present danger rule has been recognized by many decisions of the Supreme Court of the United States; that even the right of primary picketing may be prohibited at least temporarily where it is clearly apparent that a serious breach of the peace will result therefrom. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 85 L. ed. 836; Bakery etc. Union v. Wohl, 315 U. S. 769, 86 L. ed. 1179; Dorchy v. Kansas, 272 U. S. 306. Can it be logically said that this right may be limited or withheld to prevent a local breach of the peace, but is above the power of the legislature and the people themselves in the face of danger to the very life of the state and the nation, engaged in the throes of the most terrible war of all time? Of what use would the mere statement of the right be to any individual if the government which guarantees it goes down? The provision was not placed in the constitution as an abstract statement of

morality, like the Ten Commandments. It was placed there by a government which guarantees to protect and enforce it, and in the very nature of things that government must and does reserve the right and duty and power unto itself to remain in existence and capable of carrying out its guarantee.

This principle has been recognized in many decisions of the nation's highest court. In the case of Schenck v. U. S., 249 U. S. 47, at page 52, Mr. Justice Holmes makes this statement:

'We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, [fol. 256] would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. * * *

When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by a constitutional right.'

In the case of Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, at page 435, Mr. Chief Justice Hughes in the majority opinion involving the contract clause of the constitution says:

'Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court.'

In the case of Duplex Printing Co. v. Deering, 254 U. S. 443 (65 L. ed. 34), Mr. Justice Brandeis in his concurring opinion states: 'All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community.'

In Cantwell v. U. S., 310 U. S. 296 (84 L. ed. 1213), it is said: 'There are limits to the exercise of these liberties

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[fol. 257] (freedom of speech and of religion).' See also Bakery etc. Union v. Wohl, *supra*.

In the recent case of Hirabayashi v. U. S., 320 U. S. 81, at page 95 (87 L. ed. 1783), involving admitted discrimination betwen citizens, contrary to the 5th Amendment, the Supreme Court says:

'In a case of threatened danger requiring prompt action, it is a choice between inflicting obviously needless hardship on the many, or sitting passive and unresisting in the presence of the threat. We think that constitutional government, in time of war, is not so powerless and does not compel so hard a choice if those charged with the responsibility of our national defense have reasonable ground for believing that the threat is real.'

While it is true that the action involved was by the National government in the exercise of war powers, those powers are based upon the same fundamental right of sovereignty possessed by the states, viz.: the right and duty of self preservation; particularly when it is exercised in aid of the very power of the Federal Government and in the same emergency. In this connection it is noteworthy that the United States Supreme Court, following the above quotation, makes this statement:

'Approximately one-fourth of the total value of the major aircraft contracts then let by Government procurement officers were to be performed in the State of California. California ranked second, and Washington fifth, of all the states of the Union with respect to the value of shipbuilding contracts to be performed.'

[fol. 258] The Act is by its own terms an emergency law and its existence is limited to the duration of the emergency in Section 1135 thereof, *supra*.

In the case of Citizens Protective League v. Clark, Attorney General, 155 Fed. 2d (4) p. 290, the United States Circuit Court of Appeals, District of Columbia, has definitely determined that the war has not been terminated and that 'it is not for the courts to determine the end of a war declared by the Congress.' See also to the same effect the recent case, decided June 8, 1946, by the Ninth Circuit, of In the Matter of Gaetano Territo, Petitioner, — U. S. C. (Ninth Circuit) —

Furthermore, from a factual standpoint, surely any court would be justified (if not required) in taking judicial cogniz-

ance of the fact that the emergency created by the war is so far from settled that even while this case is pending our soldiers are being shot down and killed by one of the nations involved and our press is daily filled with expressions of danger that the war may again break out in a new phase so much more horrible by reason of the perfection of more efficient instruments of death as to involve the possible destruction of civilization itself. Does anyone believe that the framers of our constitution intended that in the face of such a situation the hands of the state should be tied and that if need be the wheels of industry producing the very weapons required for the preservation of the state must grind to a stop in deference to the more sacred right of free speech?

I am fully convinced that this law is a valid enactment in the exercise of the power reserved to the state for the general welfare and protection of all the inhabitants thereof [fol. 259] and for the preservation of the state itself, under the circumstances recited therein. The determination of the existence of such situation and of the necessity of such legislation is for the state legislature (and in this case also, the people themselves under the referendary provision of the state constitution) and not for the courts. Milk Wagon Drivers Union v. Meadowmoor Dairies, *supra;* Carpenter & Joiners Union v. Ritter's Cafe, 315 U. S. 722, 728 (86 L. ed. 1143, 1148); Nebbia v. New York, 291 U. S. 502 (78 L. ed. 940). In the case last cited the Supreme Court of the United States passed upon this in the following unmistakable language, at pages 537 and 538 (p. 957, L. ed.):

'With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. The course of decision in this court exhibits a firm adherence to these principles. Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.'

Defendant Lillefloren was, by his own statement, the leader and moving spirit in the proceeding, as indicated by the following testimony by one of the persons representing plaintiff in its attempt to get possession of its coffee:

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'So when we finished I went out and said (when they got it out of there, I went out and said), "Mr. Bauer, I would like to know your first name, and the other picket, I would [fol. 260] like to know your name." And Lillefloren said, "You needn't tell who you are; what do you want to know for?" I said, "I have to make two reports; I have to make one report to the client and tell him who stopped it, and I have to make another report to the court about this injunction violation, which I think is a violation." And Lillefloren said, "You fellows needn't tell who you are." And he turned to me and said, "You can say, if anyone wants to know who stopped you, I stopped you; you can tell that to the judge if you want to; I am the man that is responsible, and not these fellows." '

Other evidence bears out the fact that he was in charge and gave substantially all the orders. I deem it appropriate to take this into consideration in determining the punishment for the violation.

I find that defendant Gay Lillefloren is guilty of contempt of court by reason of the violation of the order of this court dated May 22, 1946, as charged in the affidavit herein, the said order being a part of the official file herein, having been regularly filed herein on May 22, 1946, and duly entered in the minutes of the court, which order is hereby referred to and incorporated herein and made a part hereof by such reference, and that said order was in full force and effect at the time of such violation, and that said defendant was regularly served with a copy of said order and other required papers prior to the commission of said violation.

It Is Therefore the Order of This Court that as punishment for said violation the defendant Gay Lillefloren be committed to the County Jail for the period of five (5) days and in addition thereto that he pay a fine of Four Hundred Dollars ($400.00) on each of the four counts; provided, [fol. 261] however, that said terms shall be served concurrently, and provided further that payment of the said fine on any one of the counts shall work a discharge of the fine on each of the other counts as well as the one upon which payment is made.

I find that defendant Syl Sylvane is guilty of contempt of court by reason of the violation of the order of this court dated May 22, 1946, as charged in the affidavit herein, the said order being a part of the official file herein, having

been regularly filed herein on May 22, 1946, and duly entered in the minutes of the court, which order is hereby referred to and incorporated herein and made a part hereof by such reference, and that said order was in full force and effect at the time of such violation, and that said defendant was regularly served with a copy of said order and other required papers prior to the commission of said violation.

It Is Therefore the Order of This Court that as punishment for said violation the defendant Syl Sylvane be committed to the County Jail for the period of three (3) days and in addition thereto that he pay a fine of Two Hundred Dollars ($200.00) on each of the four counts; provided, however, that said terms shall be served concurrently, and provided further that payment of the said fine on any one of the counts shall work a discharge of the fine on each of the other counts as well as the one upon which payment is made. [fols. 262-263] Formal findings and commitment necessary to carry the judgment of this Court into effect are signed concurrently herewith.

September —, 1946.

Jess E. Stephens, Judge."

Respectfully submitted, Rupert B. Turnbull, Russell E. Parsons, Attorneys for Plaintiff.

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[fol. 264] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MINUTE ORDER OF NOVEMBER 27, 1946 SETTING CASES FOR HEARING

The following cases are placed upon the calendar of the Supreme Court for hearing at the State Building, Los Angeles, California, on January 7, 8, 9 and 10th, 1947:

Tuesday, January 7, 1947, 10:00 AM.
LA 19904—Lillefloren v. Superior Court, L. A. Co.
LA 19909—Marks v. Superior Court, L. A. Co.
LA 19921—Sylvaine v. Superior Court, L. A. Co.
LA 19922—Ford v. Superior Court, L. A. Co.
LA 19923—Magisen v. Superior Court, L. A. Co.

(numerous cases omitted)

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[fols. 265-266] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MINUTE ORDER OF ARGUMENT DATED JANUARY 7, 1947

LA 19904—Lillefloren v. Superior Court
LA 19909—Marks v. Superior Court
LA 19921—Sylvaine v. Superior Court
LA 19922—Ford v. Superior Court
LA 19923—Magisen v. Superior Court

Matters (reviews) called. David Sokol argued for petitioner Sylvaine in proceeding LA 19921; A. B. Rose argued for petitioner Ford in proceeding LA 19922 and for petitioner Magisen in proceeding LA 19923, and was granted permission to file a brief within 20 days, Mr. Sokol to join in the brief. V. P. Lucas argued for petitioner Lillefloren in proceeding LA 19904 and for petitioner Marks in proceeding LA 19909. Russell Parsons argued for respondents in all proceedings, and was granted permission to file a reply brief within 20 days. Submission deferred.

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[fols. 267-270] IN SUPREME COURT OF CALIFORNIA

[Crim. No. 4733. In Bank. Oct. 3, 1947]

In re W. T. BLANEY, on Habeas Corpus

[fol. 271] OPINION—October 3, 1947

CARTER, J.:

Prior to the commencement of this proceeding, one H. C. Ramser, doing business as the Upholstery Supply Company, hereinafter referred to as Ramser, prosecuted an action for damages and injunctive relief in the Superior Court of Los Angeles County against various labor unions, W. T. Blaney, a member and business representative of Van Storage and Furniture Drivers, Packers and Helper's Local Union No. 389 (hereinafter referred to as Van Storage Union), one of the unions. Various business firms who employed labor, and who were either suppliers, carriers or customers of Ramser (hereinafter referred to as dealers) were made parties defendants. Ramser manufactures and

assembles commodities that go into furniture and sells furniture supplies. The members of Van Storage Union were picketing Ramser and demanding a closed shop contract. A temporary restraining order was issued, generally forbidding Blaney from doing various acts which were aimed at persuading the dealers to refrain from dealing with Ramser. It is disputed whether most of Ramser's employees were members of the union and whether Ramser is engaged in interstate commerce, but those matters are of no significance here in view of the limited scope of the restraining order. The restraining order commanded Blaney and his union to refrain from attempting to do or doing any of the following:

[fol. 272] "(a) Combining or agreeing to cease performing or to cause any employee of [the dealers] to cease performing any service or services for said [dealers], or any of them, or causing or agreeing to cause or threatening to cause any loss or injury to such [dealers] or any of them, for the purpose of inducing or compelling such [dealers] or any of them to refrain from doing business with [Ramser] or furnishing any supplies to [Ramser] in his business, or purchasing any supplies from [Ramser], or carrying, shipping, or receiving any freight or merchandise for [Ramser]; or

"(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

"(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined."

After application therefor an order to show cause why Blaney should not be punished for violation of the restraining order was issued and he was found guilty of contempt and committed to the county jail. The judgment of contempt recites that Ramser's action was to secure injunctive relief against the violation by Blaney of the legislative act (approved by a referendum of the people November 3, 1942), commonly referred to as the "hot cargo law." (Lab. Code, §§ 1131-1136, as added by Stats. 1941, ch. 623.) He

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seeks relief by way of habeas corpus. In the judgment the court found six counts of violation of the restraining order as follows: (1) that Blaney stated to a customer of Ramser that if it accepted merchandise from him the union would picket and boycott its plant and products; (2) that similar statements were made to another of Ramser's customers and also that the public and labor would be informed that the customer was selling "unfair" products and a picket line was established; (3) that Blaney told a supplier of Ramser he must not supply him because there was a strike at Ramser's place of business and all products of Ramser were to be picketed. The supplier complied with Blaney's demand; (4) that conduct similar to the above was followed as to another of Ramser's customers; (5) that Blaney told the Railway Express Agency, Inc., that if it accepted for shipment products of Ramser it would be picketed; (6) that [fol. 273] the Southern Pacific Company, a common carrier, was informed that if it permitted Ramser to unload from its freight cars, products which had been shipped to him, it would be picketed. Thus it appears that Blaney agreed with the other members of his union to cause and threaten to cause employees of the dealers to cease performing services, and the dealers from doing business with Ramser; that on certain dates Blaney, in furtherance of the agreement, stated to Ramser's dealers that if they accepted Ramser's merchandise they also would be picketed and "tied up" by picketing and boycotting; that some dealers were picketed, the pickets claiming that dealing with Ramser was unfair to organized labor and the like.

The "hot cargo act" reads: "The 'hot cargo' and 'secondary boycott' are hereby declared to be unlawful." (Lab. Code, § 1131.) "As used in this chapter, 'hot cargo' means any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employers to handle goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization.

"(b) [*'Secondary boycott.'*] As used in this chapter, 'secondary boycott' means any combination or agreement to cease performing, or to cause any employee to cease per-

forming any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees, for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the latter and his employees or a labor organization.

"(c) ['*Labor organization.*'] As used in this chapter, 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the pur- [fol. 274] pose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(d) ['*Employer.*'] As used in this chapter, the term 'employer' includes any person acting in the interest of an employer, directly or indirectly and any association of employers, including growers and other hirers of labor.

"(e) ['*Employee.*'] As used in this chapter, the term 'employee' includes any natural person who works for any person for compensation." (Lab. Code, § 1134.)

"Any act, combination or agreement which directly or indirectly causes, induces or compels a violation of any of the provisions of this chapter, or inflicts any loss, injury or damage on anyone because of his refusal to violate any of the provisions of this chapter shall be unlawful." (Lab. Code, § 1132.) Provision is made for injunctive relief and damages to a person injured by a violation of the statute. (Lab. Code, § 1133.)

The identification of the constitutional protection of the right of free speech, press and assembly, with the publicizing of labor disputes or problems through the medium of picketing, boycotting and otherwise, has been established. (*Thomas* v. *Collins,* 323 U. S. 516 [65 S. Ct. 315, 89 L. Ed. 430]; *Cafeteria Union, Local 302* v. *Angelos,* 320 U. S. 293

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[64 S. Ct. 126, 88 L. Ed. 58]; *Hotel Employees' Local* v. *Board*, 315 U. S. 437 [62 S. Ct. 706, 86 L. Ed. 946]; *Bakery Drivers' Local* v. *Wohl*, 315 U. S. 769 [62 S. Ct. 816, 86 L. Ed. 1178]; *Carpenters' Union* v. *Ritter's Cafe*, 315 U. S. 722 [62 S. Ct. 807, 86 L. Ed. 1143]; *A. F. of L.* v. *Swing*, 312 U. S. 321 [61 S. Ct. 568, 85 L. Ed. 855]; *Carlson* v. *California*, 310 U. S. 106 [60 S. Ct. 746, 84 L. Ed. 1104]; *Thornhill* v. *Alabama*, 310 U. S. 88 [60 S. Ct. 736, 84 L. Ed. 1093]; *Senn* v. *Tile Layers' Union*, 301 U. S. 468 [57 S. Ct. 857, 81 L. Ed. 1229]; *In re Porterfield*, 28 Cal. 2d 91, 114 [168 P. 2d 706, 167 A. L. R. 675]; *Park & T. I. Corp.* v. *International etc. of Teamsters*, 27 Cal. 2d 599, 608 [165 P. 2d 891, 162 A. L. R. 1426]; *James* v. *Marinship Corp.*, 25 Cal. 2d 721, 729-730 [155 P. 2d 329, 160 A. L. R. 900]; *Emde v. San Joaquin County etc. Council*, 23 Cal. 2d 146, 154 161 [143 P. 2d 20, 150 A. L. R. 916]; *People* v. *Dail*, 22 Cal. 2d 642, 651 [140 P. 2d 828]; *Magill Bros.* v. *Bldg. Service etc. Union*, 20 Cal. 2d 506, 511 [127 P. 2d 542]; *In re Bell*, 19 Cal. 2d 488, 497 [122 P. 2d 22]; *Steiner* v. *Long Beach Local No. 128*, 19 Cal. 2d 676 [123 P. 2d 20]; *McKay* v. *Retail Auto S. L. Union No. 1067*, 16 Cal. 2d 311, 319, 333 [106 P. 2d 373]; [fol. 275] *In re Lyons*, 27 Cal. App. 2d 182 [80 P. 2d 745].) It has been phrased by this court in various ways. "It is now settled law that workmen may lawfully combine to exert various forms of economic pressure upon an employer, provided the object sought to be accomplished thereby has a reasonable relation to the betterment of labor conditions, and they act peaceably and honestly. (Citations) This right is guaranteed by the federal Constitution as an incident of freedom of speech, press and assemblage, (citations) and it is not dependent upon the existence of a labor controversy between the employer and his employee." (*Steiner* v. *Long Beach Local No. 128, supra*, at p. 682.) "Various means of economic suasion such as picketing, the primary and secondary boycotts, and refusal to work together, often go to make up concerted efforts to induce nonmember employees to join a particular union. Such conduct may be performed in the exercise of civil liberties, guaranteed by both our federal and state Constitutions." (*In re Porterfield, supra*, p. 114.) It has been indicated, however, that the protection afforded by the free speech guarantee of the right to publicize a labor dispute by picketing, boycotting or otherwise is not absolute

or necessarily controlled by the clear and present danger test. (That test is the accepted one in the ordinary free speech cases. (*Thomas* v. *Collins, supra.*)) Generally, as stated in *Thornhill* v. *Alabama, supra,* at page 103: "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants." And the purpose of the economic pressure and the means used to exert it must be lawful, (*Park & T. I. Corp.* v. *International etc. of Teamsters, supra; James* v. *Marinship Corp., supra.*) but that proposition poses the question in terms of results. Rather it is merely stating the problem in other words. [1] The question still remains as to what purposes or what means may be declared unlawful by the Legislature or the courts without violating the provisions of the Constitution. Specifically, restraint may be laid by the state where the past conduct of the pickets is so characterized by extreme violence and riotous conduct that peaceful activity is inescapably connected therewith and cannot be separated, and there is an unravelable enmeshment of the peaceful with the unlawful conduct. (*Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. [fol. 276] 287 [61 S. Ct. 552, 85 L. Ed. 836, 132 A. L. R. [1200]; *Steiner* v. *Long Beach Local No. 128, supra.*) It has been held that the information disseminated by the pickets must be truthful. (*Magill Bros.* v. *Bldg. Service etc. Union, supra; Park & T. I. Corp.* v. *International etc. of Teamsters, supra.*) [2] But in that connection the use of such words as "unfair" or "unfair to organized labor" is not a falsification of facts and "to use loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like 'unfair' or 'fascist' is not to falsify facts." (*Cafeteria Employees Union* v. *Angelos, supra;* see *Park & T. I. Corp.* v. *International etc. of Teamsters, supra.*) It has been held that a state may validly declare that its welfare will not be served if "in a controversy between a contractor and building workers' union, the unions were permitted to bring to bear the full weight of familiar weapons of industrial combat against a restaurant business, which, as a business, has no nexus with the building dispute but which happens to be

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owned by a person who contracts with the builder." (*Carpenters Union* v. *Ritter's Cafe, supra,* 726.) The court there stated that it was not "confronted—with a limitation upon speech in circumstances where there exists an 'interdependence of economic interest of all engaged in the same industry.'" (*Carpenters Union* v. *Ritter's Cafe, supra,* 727.) And in *Bakery Drivers Local* v. *Wohl, supra,* the court held that a labor union of drivers of bakery wagons was constitutionally protected in picketing the customers and bakery suppliers to advise those persons of its grievance against peddlers of such commodity who obtained it from the bakeries and sold it to the customers, all in order to induce the peddlers to work only six days a week and to hire a union member one day a week. And *A. F. of L.* v. *Swing, supra,* holds that the constitutional guarantee is infringed by the state's limitation of peaceful picketing by labor unions to cases in which the controversy is between the employer and his employees.

[3] Regardless of the area to which the concerted labor activity, such as picketing or boycotting may be constitutionally limited, and the facts of the case at bar as above disclosed, the statute here involved cannot stand. It and the restraining order issued pursuant to it are too sweeping, vague and uncertain. It permits the prior censorship of matters undeniably protected by the constitutional guarantee of free speech and press. (See *Near* v. *Minnesota,* 283 U. S. 697 [51 S. Ct. 625, 75 L. Ed. 1357].) It makes enjoinable the mere combination or agreement resulting in the [fol. 277] refusal by employees to handle goods for their employer because of a dispute between some other employer and his employees or a labor organization. (Lab. Code, § 1134(a).) Under that provision should a group of employees or a union merely agree to give publicity to their disputes with their employer by radio or newspaper, if that agreement and publicity results in persuading the employees of some other employer to withhold services from their employer, an injunction will lie. In other words, their freedom to publicize their labor disputes or even to agree to do so is penalized. This result is made even more likely by the provision that any agreement which *indirectly induces* the withholding of services amounts to an unlawful act. (Lab. Code, § 1132.) Likewise, under the secondary boycott provision (Lab. Code, § 1134(b)) a mere agree-

ment to cause any employee to cease performing services for an employer or to cause an employer not in the dispute to cease dealing with the employer in the dispute for the purpose of bringing pressure upon the latter is denounced. There is also encompassed within its terms the mere agreement to publicize a labor dispute with the purpose of persuading other employees to cease dealing with the employer in the dispute. The inducement or persuasion to refrain from dealing may be accomplished merely by advising the dealer of the controversy and requesting him to refrain from dealing, a matter beyond doubt within the realm of the right of free speech. Merely because the object, the intermediate object (the main objective being to correct a grievance against the employer with whom the dispute exists), is to induce third persons (the dealers) to assist in exerting the economic pressure, does not create an unlawful aim. Nor is the communication of the facts of the existence of the dispute to them (the dealers) and persuading them to withhold their business, an unlawful means of furthering the campaign against the employer with whom the controversy exists. A statute so broadly and loosely drawn—which places it within the power of a court to grant injunctive relief, which by its terms may be used to strike down the right to freedom of speech, is a prior restraint upon that right and falls squarely within the rule recently declared by this court. In *In re Bell*, 19 Cal. 2d 488 [122 P. 2d 22], the ordinance made it a crime "for any person to loiter, stand, or sit upon any public highway, alley, sidewalk or crosswalk so as to in any manner hinder or obstruct the free passage . . . of persons or vehicles. . . ." (P. 496). The court stated the rule to be that (at p. 495): [fol. 278] "The ordinance must be judged on its face to determine whether its unconstitutionality prohibits acts that fall within the category of peaceful picketing. (*Thornbill* v. *Alabama*, 310 U. S. 88 [60 S. Ct. 736, 84 L. Ed. 1093]; *Carlson* v. *California*, 310 U. S. 106 [60 S. Ct. 746, 84 L. Ed. 1104]; *Hague* v. *C.I.O.*, 307 U. S. 496, 518 [59 S. Ct. 954, 83 L. Ed. 1423]; *Schneider* v. *State*, 308 U. S. 147, 162-165 [60 S. Ct. 146, 84 L. Ed. 155]; *Lovell* v. *Griffin*, 303 U. S. 444, 451 [58 S. Ct. 666, 82 L. Ed. 949]; *Stromberg* v. *California*, 283 U. S. 359, 369, 370 [51 S. Ct. 532, 75 L. Ed. 1117]; see *Near* v. *Minnesota*, 283 U. S. 697 [51 S. Ct. 625, 75 L. Ed. 1357]; *Yick Wo* v. *Hopkins*, 118 U. S. 356 [6 St. Ct. 1064, 30 L. Ed.

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220].) *If certain of its provisions operate to prohibit peaceful picketing, they are invalid even though they also prohibit acts that may properly be made illegal.* A penal statute that 'does not aim specifically at evils within the allowable area of State control, but on the contrary, *sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech* or of the press . . . lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure' and 'results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview.' (*Thornbill* v. *Alabama, supra,* at 97.) *It is not the function of the court to determine whether the restrictions imposed by the legislation can be validly applied to the facts of a particular case.* 'Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas.' (*Thornhill* v. *Alabama, supra,* at 97; *Hague* v. *C.I.O., supra; Lovell* v. *Griffin, supra; Schneider* v. *State, supra.*) *Language prohibiting conduct that may be prohibited and conduct that may not affords no reasonably ascertainable standard of guilt* and is therefore too uncertain and vague to be enforced. (*Stromberg* v. *California supra,* 369-370; *Herndon* v. *Lowry,* 301 U. S. 242, 261-263 [57 S. Ct. 732, 81 L. Ed. 1066]; *Lanzetta* v. *New Jersey,* 306 U. S. 451 [59 S. Ct. 618, 83 L. Ed. 888]; *De Jonge* v. *Oregon,* 299 U. S. 353 [57 S. Ct. 255, 81 L. Ed. 278]; *Hague* v. *C.I.O., supra; Schneider* v. *State, supra; In re Harder,* 9 Cal. App. 2d 153, 155 [49 P. 2d 304]; *Territory of Hawaii* v. *Anduha,* 48 F. 2d 171.)". (Emphasis added.) Likewise, it is said in *Thornhill* v. *Alabama,* 310 U. S. 88, 96 [60 S. Ct. 736, 84 L. Ed. 1093], concerning a statute denouncing picketing: "The State [fol. 279] urges that petitioner may not complain of the deprivation of any rights but his own. It would not follow that on this record petitioner could not complain of the sweeping regulations here challenged.

"There is a further reason for testing the section on its face. Proof of the abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. (Citations.) The cases when interpreted in the light

of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. (Citation.) One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. (Citations.) A like threat is inherent in a penal statute, like that in question here, which *does not aim specifically at evils within the allowable area of state control* but, on the contrary, *sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press.* The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. (Citation.) Where regulations of the liberty of free discussion are concerned, there are special reasons [fol. 280] for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression." [Emphasis added.] See, also, *Carlson* v. *California*, 310 U.S. 106, 112 [60 S.Ct. 746, 84 L.Ed. 1104]; *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352]; *Hague* v. *C.I.O.*, 307 U.S. 496, 518

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[59 S.Ct. 954, 83 L.Ed. 1423]; *Lanzetta* v. *New Jersey*, 306 U.S. 451 [59 S.Ct. 618, 83 L.Ed. 888]; *Lovell* v. *Griffin*, 303 U.S. 444, 452 [58 S.Ct. 666, 82 L.Ed. 949]; *Stromberg* v. *California*, 283 U.S. 359, 369 [51 S.Ct. 532, 75 L.Ed. 1117]; *In re Porterfield, supra*, 115.)

[4] The statute in question contains the provision that "If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby." (Lab. Code § 1136.) That separability clause cannot save it. As stated in *Lanzetta* v. *New Jersey, supra*, at page 453: "If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. . . . *No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.*" [Emphasis added.] While the instant statute does not directly impose criminal penalties, it does provide for injunctive relief in the event of its violation and the penalty for disobeying an injunction is contempt of court. It is a coercive measure and a person does not know in advance whether its application to his conduct will be constitutional or unconstitutional. He should not be required at his peril to make that determination, or as stated in *In re Porterfield, supra*, at page 120: "The potential severability of the ordinance, however, can have no effect upon the instant matter. As far as petitioner is concerned the existence of the statute as a whole was an operative fact. The consequences of its existence as such cannot be ignored. In order for petitioner to have secured a license he would have had to have complied with the terms of the ordinance as written. In *Smith* v. *Cahoon* (1931), 283 U.S. 553, 563-565 [51 S.Ct. 582, 75 L.Ed. 1264], a private carrier for hire was convicted of the charge of operating vehicles upon the highways without having obtained the certificate of public convenience and necessity and without having paid the tax required by a statute of [fol. 281] the State of Florida. Upon habeas corpus defendant successfully contested the constitutionality of certain provisions of the statute as applied to private carriers. It was contended in support of the conviction, however, that

a savings clause removed the infirmity of the statute. In denying the efficacy of the contention and holding that defendant was entitled to assert his constitutional right by virtue of the invalidity of the statute upon its face, the United States Supreme Court stated (page 563 of 283 U.S.): 'The effect of this savings clause is merely that, if one provision is struck down as invalid others may stand. But until such separation has been accomplished by judicial decision, the statute remains with its inclusive purport, and those concerned in its application have no means of knowing definitely what eventually will be eliminated and what will be left.'" Such a statute, in the language of the Supreme Court of the United States in *Thornhill* v. *Alabama, supra,* "Lends itself to harsh and discriminatory enforcement by local prosecuting officials [in the instant case the trial court is granting temporary restraining order and preliminary and permanent injunctions] against particular groups deemed to merit their displeasure," and "results in a continuous and pervasive restraint on all freedom of discussion [of the labor controversy] that might reasonably be regarded as within its purview." It is true that if the statute is severable, that is, if the void part described above can be eliminated, then the court is faced with the necessity of determining whether the portion which remains, or any part of such remainder, which was violated by Blaney, is valid and enforceable. But if the statute is not severable, then the void part taints the remainder and the whole becomes a nullity. It is also true that in considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. This is possible and proper where the language of the statute is mechanically severable, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words. (See *In re Bell,* 19 Cal.2d 488, 498 [122 P.2d 22], Stern, *Separability and Separability Clauses in the Supreme Court,* 51 Harv. L.Rev. 76, 79.) On the other hand, where there is no possibility of mechanical severance, as where the language is so broad as to cover subjects within and without the legislative power, and the defect cannot be cured by excising any word or group of words, the problem is quite different and more difficult of

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[fol. 282] solution. It is the latter situation which is presented by this case. As we have seen the hot cargo act applies generally to "any combination or agreement" which has the result of causing third parties to refuse to deal with or handle the goods of the employer involved in the dispute. Its provisions are not segregated in such a way as to differentiate between peaceful publicizing of the facts of a labor dispute, and secondary boycotts involving economic pressure against third parties directly or indirectly connected with the dispute. The only way in which such segregation could be made would be by judicial interpretation, first holding that the act as it stands is wholly unconstitutional, but then determining that, by inserting qualifications and exceptions in the statutory language, a judicially reformed statute might be given some effect. Such a step seems to have been contemplated by the Legislature in enacting the unusual form of severability clauses in the act heretofore quoted (Lab. Code, § 1136). By this type of provision, the Legislature has in effect sought to delegate to the courts the task of rewriting the statute, directing them to set forth, in a succession of judicial opinions upholding or annulling judgments enforcing the provisions of the act, thus determining in advance the extent to which the Legislature may go in providing regulations in this field. It is an inescapable result that, in the meantime, those individuals who guess correctly will be released by the courts, and those who guess incorrectly will be punished; but that no one, employer, employee, union or any one will know what the law is until, after violation of the statute, and judgment thereon, a higher court is given an opportunity to pass on the question of its validity as applied to the particular "person or circumstance." [5] Such a theory of judicial construction cannot be supported on either practical or legal grounds, and two well-settled propositions condemn the legislation under review here *in toto*: First, where an entire statute in general terms infringes upon the constitutional right of free speech, it will be stricken down in its entirety; and second, where, by reason of invalidity of some application of a criminal statute it fails to state definite criteria of guilt, the whole constitutes an unconstitutional denial of due process of law. Similar legislation was held void on these grounds in the Bell case, 19 Cal. 2d 495, 497, and in other decisions as here-

tofore stated. The Legislature manifestly sought, in the instant case, to prohibit every form of boycott, including some kinds which are occasionally characterized as "primary." The deliberately chosen language, covering all such activi- [fol. 283] ties in general terms, with no attempt at segregation or classification, leaves this court with no alternative but to nullify the act.

The statute provides that it shall be in "effect until May 1, 1943, and thereafter: (a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939. (b) During any perio.. of war between the United States of America and any foreign power, legally declared to exist." (Lab. Code, § 1135.) And further, that "This act is enacted for the purpose of preserving tranquillity among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State." (Stats. 1941, ch. 623, § 2.) In view of the result we are compelled to reach herein it is unnecessary to decide whether or not the statute is still in force. Nor are we concerned with whether it would be a valid measure during actual hostilities of war. The proceedings herein and all acts of which complaint are made occurred after the cessation of actual warfare or hostilities in which this country was engaged at the time of the enactment of the statute, although legally speaking a state of war may be said still to exist. The emergency presented since the cessation of hostilities is not one of getting sinews of war to the battlefields but is one of economic and social concern only. The possible clear and present danger existing during hostilities ceases to exist once they cease. [6] The actual existence of the emergency and not the limitation of the law to a prescribed period gives validity to the exercise of police power, and when the emergency ceases, the valid operation of the statute ends if it can be supported only by reason of the emergency. (*Hourigan* v. *North Bergan Tp.*, 113 N.J.L. 143 [172 A. 193, 785].) It is true that the urgency created by the economic and social problems which are the aftermath of war still remain. Such urgency is clearly in-

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sufficient to support the broad restraint on freedom of speech and the press embraced in the instant statute. It was aptly said by Mr. Justice Holmes, in his dissenting opinion in *Abrams* v. *United States*, 250 U.S. 616, 627 [40 S.Ct. 17, 63, L.Ed. 1173], in amplifying the rule stated in the majority opinion written by him in *Schenck* v. *United States*, 249 U.S. 47 [39 S.Ct. 247, 63 L.Ed. 470] (dealing with the statutes concerning the obstruction of the war effort in the [fol. 284] first world war): "I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.

"But as against dangers peculiar to war, as against others, the principle of the right of free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.' "

It is urged that from the record it appears that picketing was done which barred ingress and egress to and from Ramser's place of business and that compulsion was exerted on common carriers to violate their lawful duty as such carriers to accept goods for transportation, which acts constitute unlawful picketing an unlawful purpose or object respectively, but the restraining order and judgment of contempt are clearly predicated upon a violation of the "hot cargo act" as seen from the initial recitation therein and we do not decide whether Blaney could have properly been found guilty of contempt for his acts in connection with common carriers.

The above considerations dispose of the essential issue in the proceeding before us, and it is both unnecessary and undesirable to venture into a discussion of the permissible

limits of legislative regulation of secondary boycotts. This subject is difficult, highly controversial, and has engendered conflicting decisions by the state courts, without any sure guide in the decisions of the United States Supreme Court. Only the most general principles have been laid down by that court. We know that when a union aims its power of secondary boycott against businesses not connected with the industrial dispute, it goes beyond the limits of constitutional protection and is subject to regulation by the state (*Carpenters & Joiners Union* v. *Ritter's Cafe, supra*), and we know also that the state cannot confine the concerted action of [fol. 285] labor to steps against the unfair employer alone (*Cafeteria Employees Union* v. *Angelos, supra; Bakery Drivers Local* v. *Wohl, supra*). Somewhere between these extremes, the line may be drawn, but it should be drawn in a case wherein the issue is directly presented, and is necessary for the decision, in order that an authoritative and binding pronouncement may be made by this court and, perhaps, by the United States Supreme Court.

The Legislature manifestly sought, in the instant case, to prohibit every form of boycott, including some kinds which are occasionally characterized as "primary." The deliberately chosen language, covering all such activities in general terms, with no attempt at segregation or classification, leaves this court with no alternative but to nullify the act. Only by a carefully drawn statute which separately treats the various forms of concerted action loosely termed "secondary boycotts," can the Legislature hope to accomplish the object of regulating those forms which may ultimately be held to be within its constitutional power.

It is therefore ordered that petitioner be discharged.

Gibson, C. J., Traynor, J., and Schauer, J., concurred.

SPENCE, J.:

I concur in the judgment.

In the present proceeding the parties have discussed grave constitutional questions in the determination of which this court is bound by the decisions of the United States Supreme Court. With respect to some of those questions the decisions of the United States Supreme Court offer no certain guide, but upon the single question which appears to be decisive of this controversy, the decisions of that court clearly indicate that the statute before us (Lab. Code, §§ 1131, 1136)

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and the restraining order issued thereunder (which restraining order follows the wording of section 1134 of the Labor Code in its essential provisions) must be declared invalid as trenching upon fundamental rights guaranteed by the Constitution of the United States.

Much is said in the briefs, as well as in the majority and dissenting opinions herein, regarding the power of a state to prohibit picketing. The majority opinion stresses the decisions of the United States Supreme Court which tend to identify the right to picket with the constitutional rights of freedom of speech, of the press, and of assembly. The dissenting opinion stresses the recent decisions of that court which indicate that such rights are not identical, and that picketing may be declared unlawful and may be enjoined [fol. 286] under various circumstances. The question here, however, is not the general one of whether picketing, in its relation to that which is commonly termed "hot cargo" or "secondary boycott," may be constitutionally proscribed. The precise question for determination is whether the statute before us, defining "hot cargo" and "secondary boycott" in a particular manner (§ 1134, subds. (a) and (b)) and declaring them to be unlawful and enjoinable (§§ 1131, 1133), infringes upon constitutional guarantees. Having determined that the answer to the last question is that said statute does infringe upon constitutional guarantees, it may be assumed in this discussion that such picketing can be constitutionally proscribed by an appropriate statute drawn for the accomplishment of that purpose.

It should be emphasized that this particular statute is not merely an antipicketing statute. While the prevention of picketing may well have been one of the primary purposes of the framers of this legislation (despite the fact that the word "picketing" does not appear therein), the statute goes much further and covers a multitude of other activities. It will be sufficient to mention but a few. The board language of section 1134, subdivision (a), makes unlawful and enjoinable the mere agreement on the part of the employees engaged in the primary labor dispute to publish the facts of that dispute if such agreement and publication result in a refusal by the employees of another employer to perform any services for such other employer; and the broad language of section 1134, subdivision (b), makes unlawful and enjoinable any agreement on the part of such employees

engaged in the primary labor dispute to publicize the facts of such dispute even among their fellow-employees for the purpose of inducing such employees to withhold patronage from other employers and for the ultimate purpose of inducing such other employers to refrain from doing business with the employer engaged in the primary dispute. Thus it appears that the language of said section 1134, subdivisions (a) and (b), purports to make unlawful and enjoinable certain acts, not involving such coercive methods as picketing, which acts are clearly protected by the guarantees of freedom of speech and of the press as found in our federal Constitution (U. S. Const., Amendments 1 and 14) and as construed by the United States Supreme Court in numerous cases cited in the majority opinion.

That which has been said regarding the infringement upon constitutional guarantees made by the provisions of section 1134, subdivisions (a) and (b) of the Labor Code, may likewise be said with greater force with respect to the [fol. 287] provisions of section 1132. The last-mentioned section is not confined to any "combination or agreement" but it further declares unlawful "any *act* . . . which *directly or indirectly* . . . *induces* . . . a violation of any of the provisions of this chapter." (Emphasis added.) Thus under that section a single individual might be doing an unlawful and enjoinable act if he should merely voice or otherwise publicize the facts of a labor dispute under certain circumstances. It cannot be seriously contended that section 1132 can stand the constitutional tests laid down by the United States Supreme Court. While it is true that the provisions of that section were not made the basis of the restraining order in the present case, it is perhaps significant to note that the dissenting opinion makes no attempt to defend those provisions. They are mentioned here only to demonstrate further the wide range of activities which the statute purports to declare unlawful.

This court reviewed certain decisions of the United States Supreme Court in *James* v. *Marinship Corp.*, 25 Cal 2d 721 [155 P. 2d 329, 160 A.L.R. 900], and, in recognizing both the legislative power and its limitations, said at page 730: "Thus a state may impose limitations upon picketing or other concerted action if the 'end sought' is not permissible under state law and public policy, though any such limitations are subject to review by the United States Supreme

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Court, and will be annulled if they unreasonably interfere with labor's right to publicize the facts of a labor dispute." Under any view of the controlling decisions of the United States Supreme Court, it is clear that the above-mentioned provisions of the statute do "unreasonably interfere with labor's right to publicize the facts of a labor dispute," and that they must be declared unconstitutional for that reason. It is immaterial that a constitutional statute might have been drawn proscribing the specific acts which Blaney was found to have done in violation of the broad terms of the restraining order. Here both the restraining order and the section of the statute upon which it was based (§ 1134) cover acts which cannot be constitutionally proscribed as well as those which can, and I agree with the conclusion reached in the majority opinion that the provisions of said section are not mechanically severable so as to permit reliance upon the severability clause (Lab. Code, § 1136) to save the statute or to sustain the judgment of contempt which is under attack. It therefore follows that petitioner is entitled to his discharge.

Edmonds, J., concurred.

[fol. 288] SHENK, J., I dissent.

This court has repeatedly said, in accord with prevailing judicial opinion elsewhere, that conflicts in labor-management relations can best be controlled, not by the courts but by the Legislature. (*Parkinson Co.* v. *Building Trades Council*, 154 Cal. 581, 599, 610 [98 P. 1027, 16 Ann. Cas. 1165, 21 L.R.A.N.S. 550]; *C. S. Smith Met. Market Co.* v. *Lyons*, 16 Cal. 2d 389, 400, 403 [106 P. 2d 414]; *Magill Bros.* v. *Building Service etc. Union*, 20 Cal. 2d 506, 510 [127 P. 2d 542]; *James* v. *Marinship Corp.*, 25 Cal. 2d 721, 729, 730 [155 P. 2d 329, 160 A.L.R. 900]; *Park & T. I. Corp.* v. *International etc. of Teamsters*, 27 Cal. 2d 599, 609 [165 P. 2d 891, 162 A.L.R. 1426].) Since those decisions were rendered the Legislature has acted, not once but twice in declaring the "hot cargo" and "secondary boycott" unlawful labor practices and has provided redress by civil action.

The first act was passed in 1941 (Stats. 1941, p. 2079). The referendum was invoked against it and the effective date of the act was postponed until its approval by the electors of the state at the general election in November, 1942. During the campaign for and against it the terms

of the enactment were extensively discussed, and its meaning and effect were thoroughly understood. That act contained a provision limiting its effective duration until May 1, 1943, and thereafter during the period of war between the United States and any foreign power.

The last session of the Legislature (Stats. 1947, p.—, ch. 278) eliminated the emergency provision but without changing the law as enacted in 1941. This was done after extensive discussion and hearings during the legislative session. Now, after the Legislature has twice so acted and the electors of the state have approved the law, this court proceeds to strike it down for reasons which I deem insufficient and not compelled by any constitutional provision or by any decision of the Supreme Court of the United States.

The petitioner, W. T. Blaney, sought his release from restraint under a commitment for contempt of an injunctive order issued in an action for damages and injunctive relief brought in the Superior Court in Los Angeles County pursuant to sections 1131-1136 of the Labor Code commonly called the "Hot Cargo and Secondary Boycott Act" (Stats. 1941, p. 2079). The action had been brought by one Ramser, doing business as the Upholstery Supply Company, against specified drivers' and teamsters' unions affiliated with the American Federation of Labor, various freight lines, and other defendants including the petitioner individually and as [fol. 289] business representative of one of the unions. I will refer to the parties in that action as "plaintiff" and "defendants."

The plaintiff's plant was being picketed because of a strike by his employees. The order, dated April 18, 1946 restrained the unions and their affiliates from making any combination or agreement which would cause or attempt to cause employees of any supplier or customer or carrier of the plaintiff to cease performing services for any such employer for the purpose of causing the latter to refrain from furnishing supplies to or purchasing supplies from the plaintiff, or carrying or shipping freight or merchandise for the plaintiff. The order excepted from its operations peaceful picketing when not done pursuant to the prohibited combination or agreement. The court thereby sought to enjoin combinations or agreements in aid of threatened "hot cargo" operations or "secondary boycott" of the plaintiff's business, by which the employees of his carriers, suppliers

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and customers might be induced by picketing or otherwise to prevent their employers from carrying out their contracts with the plaintiff, without affecting the peaceful picketing of the plaintiff's plant by his employees. After hearing on a citation for contempt, the court found that the petitioner, in combination with others, had committed acts in violation of the order, and imposed both fine and imprisonment.

The acts restrained and found to have been committed were within the definition of "hot cargo" and "secondary boycott" declared unlawful by sections 1131 et seq., of the Labor Code. This proceeding therefore presented for determination certain questions concerning the constitutionality of the Hot Cargo and Secondary Boycott Act.

By section 1131 of the Labor Code the "hot cargo" and "secondary boycott" are declared to be unlawful. Section 1132 also declares unlawful any act, combination or agreement which directly or indirectly causes, induces or compels a violation of any provision of the act, or inflicts loss, injury or damage to anyone because of his refusal to violate any provision of the act. Section 1133 provides for recovery of damages and injunctive relief.

Section 1134 defines (a) "hot cargo" as "any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a dispute between some other employer and his employees or a labor organization or any combination or [fol. 290] agreement resulting in a refusal by employers to handle goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization"; and (b) secondary boycott as "any combination or agreement to cease performing, or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees, for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the

latter and his employees or a labor organization." The remaining subdivisions of that section define labor organization, employer and employee.

Section 1135 states that the act shall be in effect until May 1, 1943, and thereafter "(a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939. (b) During any period of war between the United States of America and any foreign power, legally declared to exist."

Section 1136 is a severability clause, providing that if any provision, or the application of such provision to particular persons or circumstances should be held invalid, the remainder of the act, or its application to persons or circumstances otherwise shall not be affected thereby.

There is no attack upon the findings of the court, nor upon their sufficiency to support the judgment in the contempt proceeding if the statute be deemed a valid exercise of legislative power. Since the acts (combinations and agreements) restrained and found to have been committed come within the definitions of "hot cargo" and "secondary boycott" contained in section 1134, the court is not confronted with the necessity of determining the effect of section 1132. The validity of that section is not involved under the facts in this case.

The question then is whether combinations and agreements in furtherance of "hot cargo" and "secondary boycott" operations, as defined by section 1134, may be declared [fol. 291] unlawful by the Legislature, and legal and equitable redress afforded for and to prevent injury therefrom. The petitioner contends that that legislative power does not exist because its exercise interferes with claimed freedom of speech in connection with a "secondary boycott," including peaceably conducted picketing. In other words, the petitioner invokes the constitutional guarantee of free speech as an inherent right to pursue, in union disputes with an employer, secondary coercive measures against the employer's business, including the picketing of his carriers, suppliers and customers if peaceably conducted. But, as stated in the early case of *Pierce* v. *Stablemen's Union* (1909), 156 Cal. 70, at page 78 [103 P. 324], no sanctity attaches to a trade union which puts it above the law or which confers upon it rights not enjoyed by any other individual or association.

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The alleged constitutional issue is provoked by judicial utterances that picketing is a form of free speech to be protected under constitutional guaranties. (*Seen* v. *Tile Layers' Protective Union, Local No. 5*, 301 U. S. 468 [57 S. Ct. 857, 81 L. Ed. 1229]; *Thornhill* v. *Alabama*, 310 U. S. 88 [60 S. Ct. 736, 84 L. Ed. 1093]; *Carlson* v. *California*, 310 U. S. 106 [60 S. Ct. 746, 84 L. Ed. 1104]; *American Fed. of Labor* v. *Swing*, 312 U. S. 321 [61 S. Ct. 568, 85 L. Ed. 855]; *In re Bell*, 19 Cal. 2d 488 [122 P. 2d 22].) It does not follow, and the courts have not declared, that peaceful picketing may never become actionable or enjoinable.

The present statute declares tortious (with appropriate legal and equitable redress) conduct, which in the absence of statute, courts generally have held to be tortious, but which in a minority of jurisdictions the courts have, in the absence of a permissive statute, regarded as nonactionable and nonenjoinable. (See vol. 1, Teller, Labor Disputes and Collective Bargaining, § § 123, 150 and cases cited; see, also, article, Teller, *Picketing and Free Speech*, 56 Harv. L. Rev. 180, reprinted in Teller, Labor Disputes and Collective Bargaining, April, 1947, Cumulative Supp., p. 70, tracing the emergence and history of the identification of picketing with the right of free speech.) Heretofore this court, in the absence of statute, has adopted the minority view in dealing with "secondary boycott" as a means of economic coercion in labor disputes. (*Parkinson Co.* v. *Building Trades Council, supra* 154 Cal. 581; *Pierce* v. *Stablemen's Union, supra*, 156 Cal. 70.) But, as hereinbefore stated, this court has repeatedly and uniformly declared that such a matter was one for legislative cognizance, and that since the Legis- [fol. 292] lature had not acted the courts were left without legislative guidance in the determination thereof.

Picketing for an unlawful purpose may be enjoined. (*James* v. *Marinship Corp., supra*, 25 Cal. 2d 721; *Bautista* v. *Jones*, 25 Cal. 2d 746 [155 P. 2d 343]; *Park & T. I. Corp.* v. *International etc. Teamsters, supra*, 27 Cal. 2d 599.)

Although generally, in the absence of statute, the court may not define the boundaries of an industrial dispute, the Legislature unquestionably has the power in the interests of the public welfare to prescribe reasonable limits upon the use of economic weapons by either side in industrial controversy. In *In re Porterfield*, 28 Cal. 2d 91, at 101 [168 P. 2d 706, 167 A.L.R. 675], it was definitely recognized that

the constitutionally protected right of free speech is not an absolute right; that the right does not carry with it into the conduct of businesses and professions total immunity from regulation in the performance of acts as to which speech is a mere incident or a means of accomplishment; and that a right to speak for the purpose of profit may not be indulged in derogation of the police power of the state.

This court in approving "secondary boycott" or other coercive measures as lawful union activities has repeatedly recognized the legislative power to change the policy of the state. This is evidenced by the following quotations from our decisions:

"[A]nd as with regard to other questions of economic or political aspect, the remedy, if a remedy is needed, must be found by the legislature." (*Parkinson Co.* v. *Building Trades Council, supra,* 154 Cal. 581, 599.) And at page 610, per Sloss, J. concurring, "But if there be, in such combinations, evils which should be redressed, the remedy is to be sought, as to some extent it has been sought, by legislation. If the conditions require new laws, those laws should be made by the law-making power, not by the courts."

"It may very well be that combination and organization on one side or the other places in the hands of a few persons an immense power which, in the general welfare, ought to be limited and controlled. But these are considerations for the law-making power, not for courts." (*C. S. Smith Met. Market Co.* v. *Lyons, supra,* 16 Cal. 2d 389, 400.) And at page 403, "The fear that they [labor unions] have grown so strong as to endanger vital civil liberties and disrupt the functioning of our economic system is an argument exclusively for the consideration of the legislature."

[fol. 293] "The basis for equity's intervention in cases such as this [enjoining untruthful statements in picketing] rests upon the fact that picketing is one of the forms of collective labor activity which seeks to exert economic pressure upon an employer. (See Restatement, Torts, § 796, et seq.) . . . Such collective labor activity is permissible only when conducted according to the requirements imposed by law, and if in violation of such requirements, picketing is subject under ordinary circumstances to the restraint of a court of equity . . . The standards imposed for determining whether picketing is lawful and permissible, or unlawful and enjoinable, are matters of state law which have varied from

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time to time and from jurisdiction to jurisdiction." (*Magill Bros.* v. *Building Service etc. Union, supra,* 20 Cal. 2d 506, 510.)

"Although recent decisions in the United States Supreme Court hold that a state cannot deprive labor unions of the right of free speech through peaceful picketing . . . these decisions do not deny a state the power to protect against abuses of the right. In two recent cases the court upheld the state's power to limit peaceful picketing both as to place and as to the economic relationship of the industry picketed (*Allen-Bradley Local No. 1111* v. *Wisconsin E. R. Board,* 315 U. S. 740 [62 S. Ct. 820, 86 L. Ed. 1154]; *Carpenters & Joiners Union* v. *Ritter's Cafe,* 315 U. S. 722 [62 S. Ct. 807, 86 L. Ed. 1143]). . . ." (*James* v. *Marinship Corp.,* 25 Cal. 2d 721, 729 [155 P. 2d 329, 160 A.L.R. 900].) And in the same case at page 730 it was said: "Thus a state may impose limits on picketing or other concerted action if the 'end sought' is not permissible under state law and public policy, though any such limitations are subject to review by the United States Supreme Court and will be annulled if they unreasonably interfere with labor's right to publicize the facts of a labor dispute."

Picketing involves more than speech. This was effectively demonstrated in *Carpenters & Joiners Union* v. *Ritter's Cafe,* 315 U. S. 722 [62 S. Ct. 807, 86 L. Ed. 1143], where the union, endeavoring to obtain employment of union carpenters and painters in the construction of a building in Houston, Texas, picketed the "wholly unconnected" restaurant business of the owner of the building under construction. The Supreme Court, in upholding an injunction restraining the picketing in violation of a Texas anti-trust law, said (at p. 727): "It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But the recognition of peaceful picketing as an exer- [fol. 294] cise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion

that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.

"In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. [Citing Teller and other writers.] We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill* v. *Alabama*, 310 U. S. 88, 103, 104 [60 S. Ct. 736, 84 L. Ed. 1093].

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

I note without extended comment other cases in which that power of the state has also been recognized, such as *Bakery & Pastry Drivers, etc.* v. *Wohl*, 315 U. S. 769, 775 [62 S. Ct. 816, 86 L. Ed. 1178]: "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual," and at page 776, "Picketing by an organized group is more than free speech"; *Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315, U. S. 740 [62 S. Ct. 820, 86 L. Ed. 1154], upholding the board's order to desist from mass picketing and other acts, under the Wisconsin Employment Peace (unfair labor practices) Act, as (at p. 751) "not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes"; *Duplex Print-*
[fol. 295] *ing Press Co.* v. *Deering*, 254 U. S. 443 [41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196], recognizing the legislative power to declare the public policy in regard to restraints or

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combinations engaging in secondary boycott operations; *Dorchy* v. *Kansas*, 272 U. S. 306 [47 S. Ct. 86, 71 L. Ed. 248], *upholding a statute of Kansas making it unlawful* to conspire to induce others to quit their employment for the purpose and with the intent to hinder, delay, limit or suspend the operation of mining, and making it a felony for an officer of a labor union wilfully to use the power or influence of his office to induce another to violate the act.

In *Thomas* v. *Collins*, 323 U. S. 516, 529-530 [65 S. Ct. 315, 89 L. Ed. 430], relied on by the petitioner, it was said: "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. . . . That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. . . . For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." That case involved what the majority considered to be the bare right to make a public address, purportedly restricted by a statute prohibiting solicitation of union membership by a labor union organizer without first obtaining an organizer's card. The "present danger" test may be deemed appropriate to such a situation because no more than free speech or free assembly was involved. The present case, involving something more than mere speech, is therefore not ruled by that test but is governed by the considerations dwelt upon in the Ritter's Cafe and other similar cases. For, as likewise said in the *Thomas* v. *Collins*, case, *supra*, at pages 537-538, "When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed"; and, as Justice Douglas concurring, at pages 543-544, said: "No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment. This is true

[fol. 296] whether he be an employer or an employee. But as long as he does no more than speak he has the same unfettered right, no matter what side of an issue he espouses."

The statute in the present case does not cut off other practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on th- nature and causes of a labor dispute. It cannot be overemphasized that the act speaks against combinations and agreements as therein defined, and does not purport to include the activities of organized labor by direct attack and primary boycott (cf. *In re Bell, supra,* 19 Cal. 2d 488), against the employer with whom a dispute is in progress. Many anti-trust and similar laws attest the constitutional power of legislatures to protect the public from acts pursuant to combination, conspiracy or agreement, which otherwise would be deemed lawful. "The great preponderance of judicial authority holds that individual blameless acts may become illegal if done in combination." (Teller, Labor Disputes and Collective Bargaining, vol. 1, pp. 37-38, and cases cited.) Thus the means essential to the securing of an informed and educated public opinion with respect to a matter of public concern are preserved and safeguarded by other modes of communication than the declared unlawful agreements and combinations. (Cf. *Thornhill* v. *Alabama, supra,* 310 U. S. 88, at pp. 103-104); nor does the act prohibit peaceful picketing as such (cf. *Carlson* v. *California, supra,* 310 U. S. 106; *In re Bell, supra,* 19 Cal. 2d 488).

No one will deny that the right to carry on a business is a right to be protected under fundamental law. (*Duplex Printing Press Co.* v. *Deering, supra,* 254 U. S. 443, 465; *Truax* v. *Corrigan,* 257 U. S. 312, 327 [42 S. Ct. 124, 66 L. Ed. 254].) It is a right equally entitled to recognition under the law as the right of a worker to decide when and where and for what wages he will labor, and to organize with other workers for the protection of mutual interests. Those rights are correlative in the sense that neither may be carried on unbridled and without giving some heed to their effect upon the participants and upon the welfare of the community. The community has a direct and vital interest in the matter. The general principles were stated by Justice Brandeis in his dissenting opinion in *Traux* v. *Corrigan, supra* (257 U. S. at pp. 355 et seq.) in the following language: "Practically every change in the law governing the relation of

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employer and employee must abridge, in some respect, the liberty or property of one of the parties—if liberty and property be measured by the standard of the law theretofore prevailing. If such changes are made by acts of the [fol. 297] Legislature, we call the modification an exercise of the police power. And, although the change may involve interference with existing liberty and property of individuals, the statute will not be declared a violation of the due process clause, unless the court finds that the interference is arbitrary or unreasonable or that, considered as a means, the measure has no real or substantial relation of cause to a permissible end. Nor will such changes in the law governing contests between employer and employee be held to be violative of the equal protection clause merely because the liberty or property of individuals in other relations to each other (for instance, as competitors in trade or as vendor and purchaser) would not, under similar circumstances, be subject to like abridgment. Few laws are of universal application. It is of the nature of our law that it has dealt not with man in general, but with him in relationships. . . . That the relation of employer and employee affords a constitutional basis for legislation applicable only to persons standing in that relation has been repeatedly held by this court. . . . Nearly all legislation involves a weighing of public needs as against private desires, and likewise a weighing of relative social values. Since government is not an exact science, prevailing public opinion concerning the evils and the remedy is among the important facts deserving consideration, particularly when the public conviction is both deep-seated and widespread and has been reached after deliberation. . . . The divergence of opinion in this difficult field of governmental action should admonish us not to declare a rule arbitrary and unreasonable merely because we are convinced that it is fraught with danger to the public weal, and thus to close the door to experiment within the law."

It should not be concluded that the state lacks the power to select for its citizens that one of the conflicting views regarding "secondary boycott" and "hot cargo" which the Legislature considers will best meet conditions and promote the public welfare. As said in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287, 296 [61 S. Ct. 552, 85

L. Ed. 836, 132 A. L. R. 1200], "That other states have chosen a different path in such a situation indicates differences of social view in a domain in which states are free to shape their local policy. . . . (At p. 299.) Just because these industrial conflicts raise anxious difficulties, it is most important for us not to intrude into the realm of policy-making by reading our own notions into the Constitution."

The direction taken by the Legislature, within its power as in this case, is not a matter with which this court should [fol. 298] interfere. The courts are not absolute architects of public policy. That function resides primarily in the Legislature, whose enactments the courts may not override except in cases of clear violation of constitutional guaranties.

The foregoing discussion demonstrates that the Legislature may constitutionally adopt "the prevailing, and probably unanimous, policy of the states" (*Carpenters & Joiners Union* v. *Ritter's Cafe, supra,* 315 U. S. 722, 728) when it determines that economic conditions point to the desirability of such a policy. Facts relating to the prevailing economic and social conditions and the desirability of the change in state policy to safeguard the welfare of the state, were presented to and fully considered by the Legislature. That this is so appears from the language of section 2 of the act which reads: "This act is enacted for the purpose of preserving tranquillity among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State." Both houses of the Legislature were so convinced of the necessity for the change that they passed the act of 1941 over the governor's veto. That the change in policy represented the will of the people of the state is demonstrated by the fact that the act was adopted by referendum vote at the November, 1942, general election, after extensive public debate on the subject. The act is therefore clearly expressive of both the legislative and the popular determination. It is within common knowledge that the stopping of businesses which furnish vital services and essential commodities is adverse to the public tranquil-ity, health and welfare. It would be anoma-

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lous indeed to hold that the Legislature had no power to regulate such matters because a labor dispute was involved. The Constitution does not freeze the use of economic weapons in industrial warfare beyond legislative control.

The act was in effect in accordance with its terms (§ 1135) at the time of the events occurring herein and the commitment of the petitioner, and until the expiration of the declared emergency (which may be deemed to have been July 25, 1947, when the President of the United States officially declared the termination of the wars which gave rise to the measure), prior to which the Legislature repealed section 1135 limiting the duration of the act to the war emergency and made the rest of the act permanent (Stats. 1947, p. —, [fol. 299] ch. 278, Sen. Bill 342). By section 2 of the repealing act it was declared: "This act is enacted for the purpose of permanently preserving tranquillity among the citizens of this State and to insure the unobstructed production and distribution of the products of our factories and fields, for the continued and permanent protection and preservation of our democratic way of life and the public peace, health, safety and general welfare of the people of this State."

According to the majority view, the California enactment and the restraining order issued pursuant thereto are "too sweeping, vague and uncertain," with the main reliance on *In re Bell, supra,* 19 Cal. 2d 488. That case states familiar rules applicable to the consideration of criminal ordinances and statutes. Here we are not dealing with a criminal statute. There is no more difficulty in determining what conduct will be considered a wrong pursuant to the definitions contained in the statute (§ 1134) than is experienced in other cases involving a private actionable wrong. Difference of opinion as to whether facts amount in law to a breach of the duty or a standard set up by a statute are not infrequent. (See, for example, *Truax* v. *Corrigan, supra,* 257 U. S. 312, and *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, supra,* 312 U. S. 287, holding that violence could not be made lawful by statute and showing that disagreement may ensue as to whether facts alleged amounted to violence; *United States* v. *Hutcheson,* 312 U. S. 219 [61 S. Ct. 463, 85 L. Ed. 788], and *Hunt* v. *Crumboch,* 325 U. S. 821 [65 S. Ct. 1545, 89 L. Ed. 1954], where there was disagreement as to whether the undisputed conduct con-

stituted a violation of the Sherman Anti-Trust Law, or came within the exception of section 20 of the Clayton Act as redefined by the Norris-LaGuardia Act.) The difficulty asserted in this case is not a proper ground for holding the act unconstitutional. The recent decision of the Supreme Court of the United States in *United States* v. *Petrillo*, [June 23, 1947], — U. S. — [67 S. Ct. 1538, — L. Ed. —], is especially noteworthy in this connection. The defendant in that case was charged with the violation of section 506 of the Communications Act of 1934 (48 Stats. 1064, 1102, as amended), providing punishment by the imprisonment or fine of anyone who by the use of force, violence, intimidation or duress should coerce a licensee to employ persons "in excess of the number of employees needed" to perform actual services. One of the grounds of alleged unconstitutionality [fol. 300] was that the act defined a crime in terms excessively vague. The court said: "Clearer and more precise language might have been framed by Congress to express what it meant by 'number of employees needed.' But none occurs to us, nor has any better language been suggested, effectively to carry out what appears to have been the Congressional purpose. The argument really seems to be that it is impossible for a jury or court ever to determine how many employees a business needs, and that, therefore, no statutory language could meet the problem Congress had in mind. If this argument should be accepted, the result would be that no Legislature could make it an offense for a person to compel another to hire employees, no matter how unnecessary they were, and however desirable a Legislature might consider suppression of the practice to be.

"The Constitution presents no such insuperable obstacle to legislation. We think that the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. *Robinson* v. *United States*, 324 U. S. 282, 285, 286 [65 S. Ct. 666, 89 L. Ed. 944]. It would strain the requirement for certainty in criminal law standards too near the breaking point to say that it was impossible judicially to determine whether a person knew when he was wilfully at-

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tempting to compel another to hire unneeded employees. See *Screws* v. *United States*, 325 U. S. 91 [65 S. Ct. 1031, 89 L. Ed. 1495]; *United States* v. *Ragen*, 314 U. S. 513, 522, 524, 525 [62 S. Ct. 374, 86 L. Ed. 383]. The Constitution has erected procedural safeguards to protect against conviction for crime except for violation of laws which have clearly defined conduct thereafter to be punished; but the Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

It may be noted that by the enactment of the Labor Management Relations Act of 1947 (ch. 120, Public Law 101), including amendment of the National Labor Relations Act, the Congress has declared "secondary boycott" operations by concerted action to be an unfair labor practice with [fols. 301-303] provisions for civil remedies. That legislation is cast in language the same in substance and effect as section 1134 here under consideration.

As stated, the statute here involved is not a criminal statute. It defines "hot cargo" and "secondary boycott" combinations and agreements in language which fits those operations as they are commonly practiced. As so defined they are declared to be actionable civil wrongs and enjoinable. In the present proceeding the trial court apparently experienced no difficulty in arriving at its findings that the petitioner with others had actually caused "employees of suppliers, customers and carriers of the plaintiff to cease performing services" for their employers; and had prevented such employers "from doing any business with plaintiff or purchasing any supplies from plaintiff or carrying, shipping or receiving any freight or merchandise to or from plaintiff and his place of business." The court's findings and order show a clear understanding of the legislative definitions. Likewise here, as in the Petrillo case, no one has suggested how the draftsmanship of those definitions might be improved. No contention is made that the petitioner's acts, as found by the court, were not clearly embraced within the language of the definitions. There is therefore no such difficulty with the language as would prevent the administration of the act in accord with the legislative and popular intent. That intent is to prevent

activities of persons in concert and combinations from bringing coercion to bear upon employees to stop work insofar as it would interfere with the rights of neutrals, that is, those who are not directly involved in the particular labor dispute. By the act the Legislature has determined, regardless of the prior declared emergency, and notwithstanding prior judicial declarations, that the carrying on of "secondary" operations by "combinations" of individuals as defined in section 1134 is contrary to the public interest and unlawful. In my opinion, it was within the constitutional power of the Legislature so to determine. The language of sections 1131 and 1134, the sections pertinent to the facts of this case, is certain and is readily understood. Those sections clearly and fully disclose the legislative intent and purpose to prohibit the activities which were enjoined, and there is therefore no reason at this time to resolve any question of severability arising under section 1136.

The writ should be discharged and the petitioner remanded.

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[fol. 304] IN SUPREME COURT OF CALIFORNIA

[L. A. No. 19904. In Bank. Feb. 5, 1948]

GAY LILLEFLOREN, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

[L. A. No. 19909. In Bank. Feb. 5, 1948]

RUSSELL MARKS, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

[L. A. No. 19921. In Bank. Feb. 5, 1948]

L. L. SYLVANE, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

[L. A. No. 19922. In Bank. Feb. 5, 1948]

HOMER FORD, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

[L. A. No. 19923. In Bank. Feb. 5, 1948]

IRV MAGISEN, Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent

OPINION—February 5, 1948

CARTER, J.:

In each case petitioners were found guilty of contempt for violating a temporary restraining order of [fols. 305-310] the superior court issued in an action for injunctive relief by employer-plaintiff against defendants unions and members thereof in connection with the latters' labor activities. Petitioners seek a review of the judgments and orders of commitment.

The temporary restraining order follows closely the language of the Hot Cargo Act (Lab. Code, §§ 1131-1136) which was considerd and found invalid in *In re Blaney,* [1]30 Cal. 2d 643 [184 P. 2d 892].

[1] The additional contention is made that the defendants and petitioners were engaging in their labor activity for an unlawful purpose, namely, to compel the employer-plaintiff to sign a closed-shop contract when it was engaged in interstate commerce, and defendants do not represent a majority of plaintiff's employees; that they are making a demand for a closed shop which would be unlawful under the National Labor Relations Act. (49 Stats. 449; 29 U. S. C. A. 151 et seq.) (See *Park & T. I. Corp.* v. *International etc. of Teamsters,* 27 Cal. 2d 599 [165 P. 2d 891, 162 A.L.R. 1426].) But here the restraining order did not forbid the making of such demand or engaging in the labor activity for such purpose. This court pointed out in *Park & T. I. Corp.* v. *International etc. of Teamsters, supra,* that the injunction should be limited to a restraint on the unlawful demand.

For the foregoing reasons the judgments and orders of commitment in each of the above entitled cases are annulled and the petitioners are discharged.

Gibson, C. J., Traynor, J., and Schauer, J., concurred.

Edmonds, J., and Spence, J., concurred in the judgment.

SHENK, J.—I dissent for the reasons stated in the concurring and dissenting opinion of Mr. Justice Edmonds in *Park & T. I. Corp.* v. *International etc. of Teamsters,* 27 Cal. 2d 599, at page 615 [165 P. 2d 891, 162 A.L.R. 1426], and for the additional reasons stated in my dissenting opinion in *In re Blaney,* [2]30 Cal. 2d 643 at page 661 [184 P. 2d 892].

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[1] Advance Report Citation: 30 A.C. 648.

[2] Advance Report Citation: 30 A.C. 648, at p. 666.

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[fol. 311] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

L. A. No. 19904

GAY LILLEFLOREN, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent.

L. A. No. 19909

RUSSELL MARKS, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent.

L. A. No. 19921

L. L. SYLVANE, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent.

L. A. No. 19922

HOMER FORD, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent.

L. A. No. 19923

IRV MAGISEN, Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent.

PETITION FOR REHEARING AFTER DECISION AND OPINION RENDERED FEBRUARY 5, 1948—Filed February 19, 1948

[fol. 312] Respondent, the Superior Court and Farmer Bros. Co., respondent in interest, petition the Court for a

rehearing upon the grounds and for the reasons and with reference to the particulars hereinafter stated:

## I

### The Hot Cargo Secondary Boycott Law Is Not so Vague and Indefinite as to Warrant Its Being Held Invalid

The Court now holds that upon the authority of *In re Blaney*, 30 A. C. 648, the judgments and orders of commitment in each of the above entitled cases should be annulled and the petitioners discharged.

In the *Blaney* matter, which went up to this Court upon a writ of habeas corpus and District Attorney dropped the matter after decision by this Court, apparently for the reason that the rules do not provide for a rehearing and usually on habeas corpus such matters are at an end upon decision of the State Supreme Court when they are decided adversely to the respondent.[1]

In view of the fact that no opportunity was afforded for calling the Court's attention to its position in *In re Blaney*, which appears to run counter to decisions which we deem controlling we must here and now call these matters to this Court's attention.

[fol. 313] This Court repeatedly directed those who applied to it for injunctive relief in labor matters to the legislature.[2]

It was said of complaints that combinations and organizations on one side or the other placed in the hands of a few persons an immense power which ought to be limited

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[1] There is no practice in California allowing petitions for rehearing in case of habeas corpus. See *In re Washer*, 200 Cal. at 609.

[2] "The public ultimately pays the full cost of every labor dispute and better labor relations must be established, but if they cannot be brought about by enlightened self-interest, *the remedy lies with the legislature, not in the Courts*, in so far as contests *peaceably conducted for a purpose legitimately conducted for the welfare of labor is concerned.*" (Emphasis ours.) *McKay* v. *Retail Automobile Salesmen's Local Union No. 1067*, 16 Cal. (2d) 311, at 331.

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and controlled, that these were considerations for the law-making power, not for the Courts.[3]

The question of policy making should be left to the legislative branch of the government and the so-called "hot cargo and secondary boycott" law so successfully withstood a savage attack before the legislature that it was enacted over the veto of the governor and then went to the people of the State of California, who, after one of the most vigorously conducted campaigns of organized labor (who have ever resented regulation of any kind), enacted this law by a substantial majority. Since that time the law was again enacted in view of the section of the law limiting its operation to the national emergency and it has since become a part of our Labor Code until struck down in effect by the decision in *In re Blaney*. Surely the people of this State have declared the State's policy in these matters.

[fol. 314] May we point out that the effect of the decision in *In re Blaney* is that the law is too indefinite and vague and one of common understanding might not therefore understand that with which he might be charged.

The opinion of the Court recognizes that there are instances when it is within the power of the State to set the limits of permissible contest open to industrial combatants.

*Thornhill* v. *Alabama*, 310 U. S. 88;

*Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722.

This Court has also recognized that there are circumstances under which the activities of labor unions, the First Amendment notwithstanding, may be enjoined.[4]

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[3] "It may very well be that combination and organization on one side or the other places in the hands of a few persons an immense power which, in the general welfare, ought to be limited and controlled. *But these are considerations for the law-making power, not for Courts.*" *C. S. Smith Metropolitan Market Co., Ltd.* v. *Lyons*, 16 Cal. (2d) 389 (1940) at 400.

[4] *James* v. *Marinship Corporation*, 25 Cal. (2d) 721, where the Court said: "(2) It is equally well settled that the object of concerted labor activity must be proper and that it must be sought by lawful means, otherwise the persons injured by such activity may obtain damages or injunctive relief."

Notwithstanding this, the Court again directs us to the legislature, saying in effect that this law is too vague and indefinite and one of common understanding might not readily understand that with which he was confronted or charged. The argument advanced seems to follow the reasoning of the District Court in the case of *United States* v. *Petrillo*, 68 F. Supp. 845, which case was reversed by the Supreme Court of the United States during the pendency of this appeal, in the case of *United States* v. *Petrillo*, Supreme Court Reporter Vol. 67, No. 16, p. 1538. In that case the Supreme Court said as follows, dealing with that subject:

> "First. One holding of the District Court was that, as contended here, the statute is repugnant to the due [fol. 315] process clause of the Fifth Amendment because its words, 'number of employees needed by such licensee,' are so vague, indefinite and uncertain that 'persons of ordinary intelligence cannot in advance tell whether a certain action or course of action would be within its prohibition * * *' The information here, up to the place where it specifically charges the particular means used to coerce the licensee, substantially employs this statutory language. And the motion to dismiss on the ground of vagueness and indefiniteness squarely raises the question of whether the section invoked in the indictment is void *in toto*, barring all further actions under it, in this, and every other case. Cf. United States v. Thompson, 251 U. S. 407, 412. Many questions of a statute's constitutionality as applied can best await the refinement of the issues by pleading, construction of the challenged statute and pleadings, and, sometimes, proof. The Rescue Army v. Municipal Court, *supra;* Watson v. Buck, 313 U. S. 387, 402. Borden's Company v. Baldwin, 293 U. S. 194, 204, 210, and concurring opinion at p. 213. But no refinement or clarification of issues which we can reasonably anticipate would bring into better focus the question of whether the contested section is written so vaguely and indefinitely that one whose conduct it affected could only guess what it meant. Consequently, since this phase of the appeal raises a question of validity of a statute within our jurisdiction under the

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Criminal Appeals Act, *supra*, and is ripe for our decision, we turn to the merits of the contention.

"We could not sustain this provision of the Act if we agreed with the contention that persons of ordinary intelligence would be unable to know when their compulsive actions would force a person against his will to hire employees he did not need. Connally v. General Construction Co., 269 U. S. 385, 391; Lan- [fol. 316] zetta v. New Jersey, 306 U. S. 451. But we do not agree. Of course, as respondent points out, there are many factors that might be considered in determining how many employes are needed on a job. But the same thing may be said about most questions which must be submitted to a fact-finding tribunal in order to enforce statutes. Certainly, an employer's statements as to the number of employees 'needed' is not conclusive as to that question. It, like the alleged wilfulness of a defendant, must be decided in the light of all the evidence.

"Clearer and more precise language might have been framed by Congress to express what is meant by 'number of employees needed.' But none occurs to us, nor has any better language been suggested, effectively to carry out what appears to have been the Congressional purpose. The argument really seems to be that it is impossible for a jury or court ever to determine how many employees a business needs, and that, therefore, no statutory language could meet the problem Congress had in mind. If this argument should be accepted, the result would be that no legislature could make it an offense for a person to compel another to hire employees, no matter how unnecessary they were, and however desirable a legislature might consider suppression of the practice to be.

"The Constitution presents no such insuperable obstacle to legislation. We think that the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the

language too ambiguous to define a criminal offense. Robinson v. United States, 324 U. S. 282, 285-286. It [fol. 317] would strain the requirement for certainty in criminal law standards too near the breaking point to say that it was impossible judicially to determine whether a person knew when he was wilfully attempting to compel another to hire unneeded employees. See Screws v. United States, 325 U. S. 91; United States v. Ragen, 314 U. S. 513, 522, 524, 525. The Constitution has erected procedural safeguards to protect against conviction for crime except for violation of laws which have clearly defined conduct thereafter to be punished; but the Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

May we respectfully point out that if you lay down this statute by the side of the Lea Act passed upon in the *Petrillo* case, certainly the hot cargo law meets the requirements of the decision of the Supreme Court. It is understandable and the evidence in this case shows that these respondents knew what they were doing and knew that it was a violation of the law. Their utter contempt for the administration of justice and the Court order involved herein was described in the Response of Farmer Bros. Co. Objecting to the Granting of Review, which contained the written memorandum of decision by Judge Stephens on pages 7 and 8 thereof, referred to by the Court in this fashion:

"While the following incident constitutes no part of the contempt, as it was not prohibited by the order, nor did it take place in the presence of the Court, it [fol. 318] may be mentioned as throwing some light on the attitude and intention of defendant Lillefloren in the premises. When he was served with the papers herein mentioned he asked what he was supposed to do with them and was told that he should read them carefully. He then expressed the intention of using them for a purpose for which that type of paper is neither designed nor well adapted, involving their application to a portion of his body in a manner indi-

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cating complete disrespect for the contents of the documents."

## II

### The Blaney Decision Should Be Reconsidered in the Light of the Petrillo Decision

We earnestly contend that Your Honors should grant a rehearing in this case, to the end that this case and the *Blaney* decision may be carefully reconsidered in the light of the *Petrillo* decision, and we assert that the legislature has many powers and under its general police authority and under the general welfare, if you please, it had the right to enact this law. This Court had no difficulty in finding support of the legislature's power in sustaining the validity of the Unfair Practices Act in the case of *Wholesale Tobacco Dealers Bureau of Southern California, Inc. v. National Candy & Tobacco Co.*, 11 Cal. (2d) 634, 82 P. (2d) 3. See also, *Old Dearborn Distributing Co. v. Seagrams Distillers Corp.*, 299 U. S. 183. We assert that the effect of that legislation was much the same as in this very Act under consideration.

[fol. 319]

## III

### The Separability Clause Should Save This Legislation

Next, we contend that even if some of the provisions of this Act be held invalid, in fact or application, the other provisions of the Act should be upheld as separate and distinct. Section 1136 of Chapter 8 of the Labor Code of California provides as follows:

> "Sec. 1136. Invalidity of provision or of application to particular person or circumstance. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Added by Stats. 1941, ch. 623, Sec. 1, p. 2080.)"

This clause is not unlike saving clauses to be found in numerous Acts of both the Congress and State legislatures.

For instance, see Sec. 165 of the Wagner Act; see Section 219 of the Fair Labor Standards Act, and Section 608 of the Federal Communications Act of 1934, Title 47 U. S. C. 608, which is as follows:

> "If any provision of this chapter or application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances, shall not be affected thereby."

See:

*Buchsbaum Company v. Beaman,* D. C. Ill., 14 F. Supp. 444;

*Opp Cotton Mills v. Adm. of Wage and Hour Div., Dept. of Labor,* 111 F. (2d) 23, 312 U. S. 126.

[fol. 320] In the case of *Williams v. Standard Oil Co. of Louisiana,* 278 U. S. 235, where the Supreme Court had before it the constitutionality of a state statute concerned with fixing prices at which commodities might be sold, services rendered and property used, the validity of a saving clause was discussed, and by reference to that case the similarity of such clause to the one involved here is quite apparent. The Court said:

> "Finally, it is said that even if the price-fixing provisions be held invalid, other provisions of the Act should be upheld as separate and distinct. This contention is emphasized by reference to Section 12 of the Act which declares 'If any section or provision of this Act shall be held to be invalid, this shall not affect the validity of other sections or provisions hereof.' Citing cases Hill v. Wallace, 259 U. S. 44, 71."

In that case it was said:

> "It is said that such a legislative declaration serves to assure the Courts that separate sections or provisions of a partly invalid act may be property sustained without hesitation or doubt as to whether they would have been adopted even if the legislature had been advised of the invalid part. . . ."

In the case of *Electric Bond and Share Co. v. Securities and Exchange Commission,* 303 U. S. 419, where they were

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discussing severability of registration provisions of the Public Utility Holding Company Act, the severability clause stated:

> "If any provision of this title or application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application [fol. 321] of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby"

The Court held in effect:

> "This provision reverses the assumption of inseparability . . . that the legislature intended the Act to be effective as an entirety or not at all."

It would appear therefrom that it is the opinion of the Supreme Court of the United States that when the validity of an Act or its application is in question, divisibility in order to save the Act or portions thereof, is the guiding principle. Invalid parts and invalid application may be struck down and the remainder enforced, depending upon the circumstances.

We think it will be readily conceded that the current National Labor Relations Act is probably one of the most discussed and thoroughly studied legislative enactments by Congress in recent years. May we point out that Section 15, the separability clause of the Act provides:

> "If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby." 29 U. S. Code, Sec. 165.

Which section, of course, is an exact duplicate of the similar section in the Wagner Act. It was intended to and devised to meet a situation such as we have in this case. The hot-cargo law should not be struck down by this Court in its application to the persons and facts in the case before you. The petitioners sought to accomplish an unlawful [fol. 322] objective, to-wit, to force Farmer Bros. Co. to sign a closed-shop contract when they did not represent

a majority of the employees, if anybody, in that plant. The employer then being in interstate commerce, their acts were clearly unlawful and everything they did in connection with the pursuit of that unlawful objective was unlawful and a proper subject of injunctive restraint, and the law should have been so applied.

We sincerely urge that you give careful consideration to this particular subject, and may we point out that as we prepared this Petition for Rehearing, the Supreme Court of the United States has just reversed District Judge Jones of Cleveland in holding that the Rent Control Act and its application was constitutional.

## IV

### Under the Rules of Equity the Injunction Was Good, the Acts Complained of Were All Done to Coerce the Employer to Commit an Unlawful Act

Next we direct your attention to that portion of the decision which refers to our contention that the defendants and petitioners were engaging in their activities for an unlawful purpose, namely, to compel the employer and plaintiff to sign a closed-shop contract when it was engaged in interstate commerce and defendants did not then represent a majority of plaintiff's employees; that they were making a demand for a closed-shop which would be unlawful under the National Labor Relations Act (29 U. S. C. A. 151 *et seq.*). This Court cites the *Park & Tilford Import Corp. v. Int. etc., of Teamsters,* 27 Cal. (2d) 599.

We earnestly urge that regardless of the hot-cargo law in equity we were entitled to an injunction in this case and [fol. 323] that the convictions should have been affirmed. There can be no doubt but that the demands were for an unlawful purpose. There is no room in this case for the reviewing Court to disregard the cold Findings of Fact by the trial court and assume that the purpose for which the union conducted the activities complained of was different than that which the evidence shows conclusively it to have been.

The hard realities in this case show that this concern employed more than two hundred employees and the union had been trying to organize them; that the concern was in interstate commerce, and the union was unsuccessful. They

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then made demands that the employer sign a closed-shop contract. [See paragraphs 21, 22, 23 of the Complaint, pp. 20-24 of the Record.]

The Complaint before the Court, at the time of granting the injunction [R. p. 19, par. 19], contained this statement by one of the union representatives: "You had better sign this contract because we could picket this place for ten years and we don't think we could get a majority of your employees to join our unions."

That was their avowed purpose and they never departed from it. There is no room for any assumptions in this case of some theoretical or lawful purpose. All of the boycotting, picketing, was for one thing only, to compel Farmer Bros. Co. to commit an unlawful act. To carry that out the petitioners went so far as to go to common carriers and insist that they violate the law, as was shown in the Findings of this case, where the petitioners went to common carriers and stopped the delivery of green coffee as it was being unloaded from ships in interstate commerce onto the docks of a licensed interstate carrier, the forwarding [fol. 324] company. [See Findings of the trial court, R. 193, 198, 183, 187.]

These are findings which it would appear under the rules laid down for years are binding upon an appellate court.

*Still v. San Francisco & Northwestern Railway Co.*, 154 Cal. 559.

Surely this decision runs counter to and is in conflict with the decision filed upon the same day in the case of *Northwestern Pacific Railroad Company, Plaintiff and Respondent, v. Lumber & Sawmill Workers' Union, United Brotherhood of Carpenters & Joiners of America, Defendants and Appellants.*

We urge that the instant case can readily be distinguished from the *Park & Tilford* case hereinbefore referred to and relied upon in the opinion of the Court in this case, in that, all of the activities in this case are for an unlawful purpose, and there is no possibility that the Court can find otherwise. For instance, in the facts before you now, there is no proposition that the business agents of the union were following a product made under sweat-shop or other conditions which might operate against the proper objectives of labor, but they were pursuing a common carrier who by contract and

by law was under obligation to deliver to Farmer Bros. Co. the green coffee which it had undertaken to carry and deliver from Central America to the ports of delivery, Wilmington and San Pedro. Can this Court put the stamp of approval upon that sort of thing? Can this Court condone the contemptuous attitude of these petitioners? We urge that with all regard to the rights under the First Amendment, which should be held inviolate and we yield to no one [fols. 325-326] in their defense, that they should not be used as a cloak behind which such pernicious conduct and unlawful activities shall be carried on.

It is respectfully urged that for the reasons hereinabove set forth a rehearing should be had herein and the question decided as to whether or not this law which obviously expresses the will of the people of California and establishes the policy of this state in labor relations, shall be struck down in its entirety, both as to intent and application, and this Court should reconsider its position upon the entire field of labor relations, for if these decisions are to stand, then in California equity is indeed impotent to aid an employer. The minimum relief this Court should afford is now to send this case back to the trial court for directions, for certainly it can be made to appear that the application of the hot-cargo law to the facts in this case, is constitutional, and certainly we are entitled to the equitable relief sought under the facts set forth in the First Cause of Action.

Respectfully submitted, Harold W. Kennedy, County Counsel; William E. Lamoreaux (Signed), Deputy County Counsel, Attorneys for Respondent, The Superior Court. Rupert B. Turnbull and Russell E. Parsons, by Russell E. Parsons (Signed), Attorneys for Respondent in Interest, Farmer Bros. Co., a Corporation.

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[fol. 327] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Bank

[Title omitted.]

ORDER DENYING REHEARING—March 4, 1948

Respondent's petition for rehearing denied.
Shenk, J. voting for a rehearing.

Gibson, Chief Justice.

Dated: March 4, 1948.

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[fols. 328-329] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 330] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. —

GAY LILLEFLOREN, Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR WRIT OR WRITS OF CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing petition for writ or writs of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 3, 1948.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of June, 1948.

[fol. 331] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 191

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and Farmer Bros. Co., Petitioners,

vs.

GAY LILLEFLOREN et al.

ORDER ALLOWING CERTIORARI—Filed October 11, 1948

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted, and the case is assigned for hearing immediately following No. 182, Giboney et al. vs. Empire Storage and Ice Co.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Office - Supreme Court, U.S.
FILED
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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and THE COUNTY OF LOS ANGELES and FARMER BROS. CO., a corporation, THE REAL PARTY IN INTEREST, Petitioners,

vs.

THE LEGISLATURE, ECONOMIC MINERAL L. L. STEWART, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF


Dorsey, E. Farmer,
215 West Third Street, Los Angeles 13,
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Farmer Bros. Co., a Corporation,
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# INDEX

## Subject Index


| | Page |
|---|---|
| Petition for writ of certiorari | 1 |
| Opinions below | 1 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| Statutes involved | 3 |
| Statement | 6 |
| Specification of errors to be urged | 11 |
| Reasons for granting the writ | 11 |
| Conclusion | 18 |
| Brief in support of petition | 19 |
| Preliminary statement | 19 |
| Specifications of errors | 19 |
| Argument | 20 |
| Conclusion | 24 |


## Statutes Cited


| | |
|---|---|
| California Constitution, Art. 12, Par. 21 | 13 |
| California Civil Code, Sec. 2169, 2170 | 13 |
| Constitution of the United States: | |
| 1st Amendment | 3, 11, 19 |
| 14th Amendment | 3, 11, 16, 19, 20 |
| Deering's Act 6386, Sec. 19 | 13 |
| Deering's California Codes (Labor Code, Chap. 8, p. 60) | 3 |
| Interstate Commerce Act, Sec. 1(4), 49 U. S. C. 1(4) | 13 |
| Judicial Code, Sec. 237(b) | 2 |
| Labor Code of California, Sections 1131-1136 (Statutes 1941 Ch. 623, Sec. 1, p. 2079) | 2, 3, 11 |
| National Labor Relations Acts, 29 U. S. C. A. 151 | |
| Public Utility Act, Sec. 19 | 13 |
| Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. 101 | 13 |
| Unfair Practice Act, Statutes 1931, page 508 as amended by Act 8787 of the General Laws | 22 |

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

# No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., A CORPORATION, THE REAL PARTY IN INTEREST, *Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered on February 5, 1948 (R. 215), reversing the judgments of the Superior Court of California for the County of Los Angeles (R. 216), and directing that Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen be discharged (R. 216).

### Opinions Below

The memorandum of opinion of the Court below, Superior Court of the State of California in and for the County of Los Angeles, is in the Response of Farmer

Bros. Co., Objections to Granting Review by the Supreme Court of California (R. 169). The opinions in the Supreme Court of California (R. 215); Dissenting Opinion (R. 216) are reported in 31 Advance California Reports, page 460, 189 Pac. (2d) 265. The Opinion relied upon by the Supreme Court of California holding unconstitutional the law here involved, *In Re Blaney* (R. 181), Dissenting Opinion (R. 199), is reported in 30 Advance California Reports, page 648. Dissenting Opinion, page 666, 184 Pac. Rep. (2d) 892.

## Jurisdiction

The judgment of the Supreme Court of California was entered February 5, 1948 (R. 215). It ordered that the judgments of the Superior Court "the judgments and orders of commitment in each of the above entitled cases are annulled and the petitioners are discharged." The constitutional issues here presented were urged in the trial court (R. 118, 107, 121), where the demurrers of Lillefloren and the others were overruled in the court below. The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended.

## Questions Presented

Sections 1131-1136 of the Labor Code of California defines certain acts which are called hot cargo and secondary boycotts. Certain definitions are given and provision is made for injunctive relief and recovery of damages. The act in substance denounces any act, combination or agreement which directly or indirectly causes, induces, or compels a violation of the provisions of the act or inflicts any loss, injury or damage, and defines "hot cargo" "secondary boycott."

The questions presented are:

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1. Whether the act is so uncertain that a person does not know in advance whether its application to his conduct will be constitutional or unconstitutional, and whether it violates due process of law as protected by the Fourteenth Amendment to the Constitution, and abridges free speech as safe-guarded by the First Amendment to the Constitution?

2. Whether the denial by the Supreme Court of California to the petitioners of relief under the facts set forth in the complaint, deprives the petitioners in interest of the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution?

## Statutes Involved

The statutory provisions involved are Sections 1131-1136 of the Labor Code of California (Statutes 1941 Ch. 623, § 1, p. 2079), adopted by referendum vote at a general election of the people of California November 3, 1942, subsequent to enactment by the legislature of California, Deering's California Codes (Labor Code, Chapter 8, p. 60):

"CHAPTER 8

HOT CARGO AND SECONDARY BOYCOTTS

(Added by Stats. 1941, ch. 623, § 1, p. 2079; Adopted by referendum vote at general election of November 3, 1942.)

§ 1131. Declaration of unlawfulness.

§ 1132. Acts, etc., causing violation of chapter.

§ 1133. Injunctive relief: Recovery of damages.

§ 1134. Definitions.

§ 1135. Duration of statute.

§ 1136. Invalidity of provision or of application to particular person or circumstance.

§ 1131. *Declaration of unlawfulness.* The "hot cargo" and "secondary boycott" are hereby declared to be unlawful. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

The statute by which this chapter was added further contained the following section:

§ 2. (Purposes of act.) This act is enacted for the purpose of preserving tranquility among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State. (Stats. 1941, ch. 623, § 2.)

Anno: See 12 Mck. Dig. Labor, § 22; 15 Cal. Jur. 578; 31 Am. Jur. 957, *et seq.*

§ 1132. *Acts, etc., causing violation of chapter.* Any act, combination or agreement which directly or indirectly causes, induces or compels a violation of any of the provisions of this chapter, or inflicts any loss, injury or damage on anyone because of his refusal to violate any of the provisions of this chapter shall be unlawful. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1133. *Injunctive relief: Recovery of damages.* Any person injured or threatened with injury by any violation of any of the provisions of this chapter shall be entitled to injunctive relief therefrom in a proper case, and to recover any damages resulting therefrom in any court having jurisdiction in the State of California. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1134. *Definitions.*

(a) ("Hot Cargo.") As used in this chapter, "hot cargo" means any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a

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dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employers to handle goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization.

(b) ("Secondary boycott.") As used in this chapter, "Secondary boycott" means any combination or agreement to cease performing, or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the latter and his employees or a labor organization.

(c) ("Labor organization.") As used in this chapter, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(d) ("Employer.") As used in this chapter, the term "employer" includes any person acting in the interest of an employer, directly or indirectly and any association of employers, including growers and other hirers of labor.

(e) ("Employee.") As used in this chapter, the term "employee" includes any natural person who works for any person for compensation. (Added by Stats. 1941, ch. 623, § 1, p. 2079.)

§ 1135. *Duration of statute.* This chapter shall be in effect until May 1, 1943, and thereafter:

(a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939.

(b) During any period of war between the United States of America and any foreign power, legally declared to exist. (Added by Stats. 1941, ch. 623, § 1, p. 2080.)

§ 1136. *Invalidity of provision or of application to particular person or circumstance.* If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Added by Stats. 1941, ch. 623, § 1, p. 2080.)"

**Statement**

On May 21, 1946, petitioners in interest, Farmer Bros. Company, a corporation, filed a suit in the Superior Court of the State of California in and for the County of Los Angeles (R. 2). Among the defendants therein and respondents herein were Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen, all of whom were alleged to be business agents and representatives of certain labor union defendants (R. 9-11-12). The allegations of the complaint may be summarized as follows:

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Farmer Bros. Company is a corporation organized under the laws of the State of California, having its principal place of business in Los Angeles, California, and for more than twenty years had been engaged in the business of roasting, packaging, distributing and selling coffee, tea, spices, with restaurant crockery to cafes, restaurants, coffee shops and institutions. The company also engaged in manufacturing and assembling coffee-brewing and coffee-dispensing machinery, stoves and urns. The business was both intra-state and inter-state. The company imported raw coffee from Central and South America, processing it at its plant in Los Angeles and then shipping it for distribution and sale to various points, including branch offices throughout California, Oregon, Nevada, Arizona, Idaho, Texas, Utah and New Mexico (R. 8). That in connection with the distribution of its products, the company used licensed common carriers, such as steam ship companies, railroad companies and trucking concerns. (R. 10).

That in the conduct of its business, the company employed approximately three hundred persons; that there was not any labor controversy or disputes between the company and its employees; that the defendant unions did not represent a majority of the company's employees for collective bargaining purposes but notwithstanding, the unions and their agents, the respondents herein, demanded that the company sign a closed shop contract.

The company protested that under the Wagner Act they could not do so unless the unions represented a majority of its employees, the company being in inter-state commerce and subject to the Wagner Act.

The unions reported: "You had better sign this contract because we could picket this place for ten years and

we don't think we could get a majority of your employees to join our unions" (R. 15) (C. R. 19).

The company refused to sign such a contract in the absence of a showing that the unions represented a majority of its workers for collective bargaining purposes, or an election to determine that question, to be conducted by the N. L. R. B. The unions placed the company on the unfair list and then commenced notifying railroads, steamship companies, common carriers and suppliers of the company that if they did business with the company such concerns would have trouble, that their employees would be called out on strike (Par. XXV, Complaint, R. 20).

As a result, the company had several carloads of coffee, valued in excess of Fifty-Thousand ($50,000.00) Dollars, kept in San Pedro Harbor, California (Par. XXVI, Complaint, R. 21). The company was practically stopped from doing business with common carriers (Pars. XXIX, XXX, XXXI of Complaint, R. 22-30).

The complaint alleges that the defendant unions therein named and others as agents thereof, including the respondents herein, entered into a combination and agreement in violation of the Statute herein involved, to carry out the purposes of such agreement and to force Farmer Bros. Company to execute a closed shop contract (Pars. XXXIV, XXXV, XXXVI, XXXVII, XXXVIII and XXXIX, R. 32-35). Complaint also contained an allegation that the company had "no plain, speedy or adequate remedy at law," and unless restrained from performing and committing the unlawful acts complained of, the defendants therein would cause irreparable damage and injury to the company (Par. XLI Complaint R. 36). The complaint then alleges a second cause of action, in Paragraphs I, II and III of the second cause of action, and invokes Sections 1131-1136 inclusive, of the Labor Code and alleges it had

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been damaged in the sum of Twenty-Five Thousand ($25,000.00) Dollars.

The prayer follows asking for injunctive relief, both temporary and permanent. Affidavits of Ted Ehler, Tony Sinozich and Louis Clemens were filed, and application for a temporary restraining order and order to show cause were made, and on May 22, 1946 the Superior Court of the State of California in and for the County of Los Angeles, upon the complaint and such affidavits, issued a temporary restraining order and order to show cause (R. 54), and thereafter demurrers of various defendants were filed (R. 56-57-69) raising the constitutional questions and extensive memoranda of points and authorities were filed (R. 62).

After issuance of the temporary restraining order, the respondents herein were each duly served with the same and thereafter a joint affidavit of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, in support of the Company's application for the alleged contempt of Gay Lillefloren, was filed; and subsequently an affidavit of Roy F. Farmer for contempt of Gay Lillefloren and L. L. Sylvane was filed (R. 81); and thereafter an affidavit as to Homer Ford, Russell Marks and Irv Magisen, said affidavit being of Roy F. Farmer, was filed (R. 97), and an Order to Show Cause was issued by the Superior Court (R. 95), directing Gay Lillefloren, Homer Ford, Russell Marks and Irv Magisen to appear and show cause why they should not be punished for contempt of court (R. 96).

The charging affidavit for contempt alleged: That after the filing of the complaint by the company, the temporary restraining order had issued, and the complaint was incorporated in its entirety in the charging affidavit, by reference; That the respondents herein had been duly served with the same, and it also alleged that notwithstanding that they had interfered with the General Steamship Cor-

poration, the Indies Terminal Company and the Sheriff of Los Angeles County in the delivery of several hundred sacks of green coffee by the steamship companies, which were alleged to be common carriers, to Farmer Bros. Company, said respondents threatened the common carriers that unless they ceased delivering coffee to the company that the dock "would be tied up."

The respondents herein appeared by demurrer charging that it was a violation of the constitutional rights and violated the Fourteenth Amendment to the Constitution (R. 107-118). Demurrers to the contempt affidavits were overruled and thereafter the contempt matters were set down for trial and tried before the Honorable Jess E. Stevens, Judge Presiding, Department 30 of the Superior Court of the State of California in and for the County of Los Angeles. The trial extended over some days, argument was made to the court and briefs filed. Thereafter the court rendered a memorandum opinion. (See Response of Farmer Bros. Co., Objections to Granting Review, R. 169).

After such opinion by the court, judgment and warrants of commitment on conviction of contempt of court were rendered against respondents, Homer Ford (R. 124), against Gay Lillefloren (R. 146), against Russell Marks (R. 131), against Irv Magisen (R. 138), and against Sylvane (R. 156).

Thereafter, petitions were filed with the Supreme Court of California for review. The matters were argued, submitted and decided by the Supreme Court of California as hereinbefore indicated.

Thereafter, a petition was filed by the Superior Court of the State of California in and for the County of Los Angeles and the respondent in interest, Farmer Bros. Co., seeking a rehearing by the Supreme Court of California. This was subsequently denied by the Supreme Court of

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California (31 A. C. No. 13, Minutes, page 5), Justice Shenk voting for rehearing.

## Specification of Errors to be Urged

The Supreme Court of California erred:

1. In holding that the so-called "hot cargo and secondary boycott law" was so uncertain that it violated due process of law as protected by the Fourteenth Amendment to the Constitution and that it was unconstitutional for the reason that it abridged the right of free speech as guaranteed by the First Amendment to the Constitution.

2. In refusing to grant relief to the petitioners in interest under the facts set forth in the complaint, the Supreme Court deprived the petitioners in interest of the equal protection of the law and it amounted to a denial of due process of law in violation of the Fourteenth Amendment to the Constitution.

The injunction claimed was good and restrained the commission by the respondents of unlawful acts and, in equity, Farmer Bros. Co. were entitled to the injunction, and its denial by the Supreme Court of California amounts to a denial of equal protection under the law and a denial of due process.

## Reasons for Granting the Writ

### I

SECTIONS 1131-1136 OF THE LABOR CODE OF CALIFORNIA ARE CONSTITUTIONAL, CLEAR, CERTAIN AND READILY NOTIFY A PERSON OF ORDINARY INTELLIGENCE OF THE ACTS DENOUNCED. IT WAS A PROPER EXERCISE OF THE POLICE POWER OF THE STATE.

Sections 1131 to 1136 of the Labor Code are plain, certain and readily understood and represent nothing more

than the right of the State to protect against abuses of the right of free speech.

The state had a right to impose limits on the concerted actions of labor unions, its members and agents, and this act represented the policy of the people of the State of California in such matters, as indicated by the enactment of the law by the Legislature in the first instance and its subsequent ratification in referendum by the people of the State of California. (*In Re Blaney,* 30 Advance California Reports, 648, 666.)

This act resulted from numerous statements by the Supreme Court of the State of California to the effect that "with reference to the power that is placed in the hands of a few persons by combinations and organizations on either side, that these are considerations for the law making power not for the courts." *C. S. Smith Metropolitan Market Co.* v. *Lyons,* 16 Cal. (2d) 389, 400; *McKay* v. *Retail Automobile Salesmen's Local Union 1067,* 16 Cal. (2d) 311, 331;

It is the unlawful agreement and conspiracy and concerted action that is denounced by this law and the facts recited in the complaint show that the demands made by the union were unlawful; they did not represent a majority of the workers for collective bargaining purposes, and any contract that had been entered into would have been void *ab initio.* The court of equity had nothing to do but to issue an injunction, for the unlawful agreement had as its objective an unlawful purpose. National Labor Relations Act (29 U. S. C. A. 151, *et seq.*); See *Park & Tilford Import Corp.* v. *International, etc., of Teamsters,* 27 Cal. (2d) 599.

Unlawful demands were made upon common carriers to refuse to perform in accordance with the law and their bounden duty as common carriers. Such a demand was

unlawful. (See California Civil Code, Sec. 2169, 2170; Inter-State Commerce Act, Sec. 1, (4), 49 U. S. C. 1 (4); Cal. Const., Art. 12, Par. 21; Public Utility Act, Sec. 19; Deering's Act 6386, Sec. 19.)

Under the Sherman Law and Clayton Act, prior to the implied amendment thereof in 1932 by the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101) as interpreted in *United States* v. *Hutcheson*, 312 U. S. 219, the Supreme Court held that "boycotts through combinations restraining interstate commerce were unlawful acts and subject to civil action as well as being a crime." This was true whether or not the boycott was carried on solely by peaceful persuasions, it was true whether or not the boycott was organized solely by unions and their members. See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 466, 468, 474, 478; *Bedford Company* v. *Stone Cutter's Assn.*, 274 U. S. 37, 50, 55; *Lawlor* v. *Loewe*, 235 U. S. 522.

Even today a boycott carried on by a combination of unions and members, violates the Sherman Act. *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797.

The fact that the Supreme Court thus construed and applied the Sherman Act, the repeated decisions over many years as a statute prohibiting secondary boycotts by labor unions, leaves no room for the claim, we submit that a statute so providing is unconstitutional. Even the judges who dissent from the court's decisions in the cases cited above were careful to say that the matter was strictly one of statutory construction and not of constitutional right. See *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 488. To the same effect is *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488: "Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of Statutory construction, not constitutional power." See *National Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 39-40.

Even as far back as 1908, in *Parkinson Co.* v. *Bldg. Trades Council*, 154 Cal. 581, the Court upheld the right of labor to conduct a secondary boycott, there being no statute prohibiting it. In the opinion of the Court by Chief Justice Beatty it was said, page 599:

> "Whatever others may think of the policy or justice of such a rule, that is a matter outside the province of the courts, and as with regard to other questions of economic or political aspect, the remedy, if a remedy is needed, must be found by the legislature."

Recent cases in California have not deviated from that rule, or modified those statements—that relief was to be had from the legislature, whose duty it was to protect the public welfare. See *McKay* v. *Retail Auto S. L. Union No. 1067*, 16 Cal. (2d) 311, 331. See also, *C. S. Smith Met. Market Co.* v. *Lyons*, 16 Cal. (2d) 389, 400.

The facts recited in the complaint in question were sufficient to bring the present case within the many cases which hold that combinations for unlawful purposes and activities in support thereof, even including peaceful picketing, may be or become actionable or enjoinable and even in the absence of a Statute such action infringes no Constitutional action of any kind. See *James* v. *Marinship Corp.* (1944), 25 Cal. (2d) 721, 728; *Bautista* v. *Jones* (1945), 25 Cal. (2d) 746, 748, 752; *Carpenters & Joiners Union* v. *Ritter's Cafe* (1942), 315 U. S. 722, 725, 728.

This is a case where a plain pattern is laid down by the cases dealing with the subject in hand. The cases established that the legislature may make unlawful—as here it has done—concerted action to effect a secondary boycott. The cases hold, without any dissent, that combinations for an unlawful purpose and picketing in support thereof can be prohibited. Admittedly, the public can by statute put some limitation on the scope of labor

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disputes and can localize them to some extent. In other words, the legislature has the right to define the limits within which the combatants in a labor dispute may conduct their warfare. See *Carpenter's & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 728. See also *Bakery & Pastry Drivers, etc.* v. *Wohl*, 315 U. S. 769, 775. "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual."

Mr. Justice Shenk, in the dissenting opinion, in the case of *In Re Blaney*, 30 A. C. 648, 666, said:

> "This court has repeatedly said, in accord with prevailing judicial opinion elsewhere, that conflicts in labor-management relations can best be controlled, not by the courts but by the Legislature." (citing cases).
>
> "Since those decisions were rendered the Legislature has acted, not once but twice in declaring the "hot cargo" and "secondary boycott" unlawful labor practices and has provided redress by civil action.
>
> The first act was passed in 1941 (Stats. 1941, p. 2079). The referendum was invoked against it and the effective date of the act was postponed until its approval by the electors of the state at the general election in November, 1942. During the campaign for and against it the terms of the enactment were extensively discussed, and its meaning and effect were thoroughly understood. That act contained a provision limiting its effective duration until May 1, 1943, and thereafter during the period of war between the the United States and any foreign power.
>
> The last session of the legislature (Stats. 1947, p. 844, ch. 278) eliminated the emergency provision but without changing the law as enacted in 1941. This was done after extensive discussion and hearings during the legislative session. Now, after the Legislature has twice so acted and the electors of the state have approved the law, this court proceeds to strike it down for reasons which I deem insufficient and not

compelled by any constitutional provision or by any decision of the Supreme Court of the United States."

The respondents in this case knew full well what they were doing. They thoroughly understood what they were restrained from doing and the conduct of one of the respondents, at the time of the service of the injunction on him, demonstrated his knowledge of the proceeding, the law, and his utter contempt for the courts, as Mr. Judge Stephens said (R. 169) (Response of Farmer Bros. Co., Objections to Granting Review, pp. 7-8):

> "While the following incident constitutes no part of the contempt, as it was not prohibited by the order, nor did it take place in the presence of the Court, it may be mentioned as throwing some light on the attitude and intention of defendant Lillefloren in the premises. When he was served with the papers herein mentioned he asked what he was supposed to do with them and was told that he should read them carefully. He then expressed the intention of using them for a purpose for which that type of paper is neither designed nor well adopted, involving their application to a portion of his body in a manner indicating complete disrespect for the contents of the documents."

## II

THE DENIAL BY THE SUPREME COURT OF CALIFORNIA TO THE PETITIONER, FARMER BROS. CO., THE REAL PARTY IN INTEREST, OF RELIEF UNDER THE FACTS SET FORTH IN THE COMPLAINT DEPRIVED THE PETITIONER IN INTEREST OF THE EQUAL PROTECTION OF THE LAW AND DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

Under the facts recited in this case, Farmer Bros. Co., being in inter-state commerce, under the National Labor Act as it then existed, could not deal with a union which did not represent a majority of its members for collective bargaining purposes. (29 U. S. C. A. 151, *et seq.*); *Park &*

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*Tilford Import Corp.* v. *International, etc., of Teamsters,* 27 Cal. (2d) 599.

There can be no doubt but that the demands were for an unlawful purpose. There is no room in this case for the reviewing court (Supreme Court of California) to disregard the cold findings of fact by the trial court and assume that the purposes for which the union conducted its concerted activities was different than that which the evidence shows conclusively it to have been.

The hard realities in this case show that this concern employed more than 250 employees and the union had been trying to organize them; that the concern was in inter-state commerce; also, the union was unsuccessful. They then made demands that the employer sign a "closed shop contract". (See Paragraphs XXI, XXII, XXIII of the Complaint (R. 14-18).

The complaint recites facts which demonstrate an unlawful interference with common carriers and the decision in this case runs counter with the decision filed the same day by the Supreme Court of California in the case of *N. W. Pac. R. R. Co.* v. *Lumber & S. W. Union,* 31 Advance California Reports, p. 448, where the Court sustained an injunction interfering with a common carrier in the discharge of its bounden duty. To grant relief to the railroad in one breath and to deny it to Farmer Bros. Co. in the next is a plain denial of equal protection of the Law. (*Yick Wo* v. *Hopkins,* 118 U. S. 220.)

Plainly the acts of the union were unlawful in that the demands in the first instance were unlawful—the demand of a "closed shop contract" where they did not represent the majority of the workers. Next, they proceeded with the interference with common carriers in the discharge of a duty which, under the law, they were required to perform.

In these contempt proceedings, Lillefloren and the other

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agents interfered with the delivery of green coffee by a common carrier. It was a plain effort to put Farmer Bros. Co. out of business if they failed to accede to the unlawful demands of the respondents.

Manifestly, to permit this decision to stand makes the California courts impotent to grant relief. It deprives even a court of equity of the right to restrain unlawful activities.

**Conclusion**

WHEREFORE, the petition for a Writ of Certiorari to the Supreme Court of California should be granted.

Respectfully submitted,

RUSSELL E. PARSONS,
*Attorney for Petitioner,*
*Farmer Bros. Co., the real party in interest.*

HAROLD W. KENNEDY,
*County Counsel,*
WILLIAM E. LAMOREAUX,
*Deputy County Counsel,*
*Attorneys for Petitioner,*
*The Superior Court.*

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

# No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., A CORPORATION, THE REAL PARTY IN INTEREST, *Petitioners*,

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

### Preliminary Statement

For a statement showing the disposition of the instant case by the courts below, the basis on which the jurisdiction of this Court is claimed, the questions presented, and a statement of the case, reference is here made to the foregoing Petition for Writ of Certiorari.

### Specifications of Errors

The judgment of the Court below should be reversed for the following reasons:

I

IN HOLDING THAT THE SO-CALLED "HOT CARGO AND SECONDARY BOYCOTT LAW" WAS SO UNCERTAIN THAT IT VIOLATED DUE PROCESS OF LAW AS PROTECTED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND THAT IT WAS UNCONSTITUTIONAL FOR THE REASON THAT IT ABRIDGED THE RIGHT OF FREE SPEECH AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION.

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II

IN REFUSING TO GRANT RELIEF TO THE PETITIONERS IN INTEREST UNDER THE FACTS SET FORTH IN THE COMPLAINT, THE SUPREME COURT DEPRIVED THE PETITIONERS IN INTEREST OF THE EQUAL PROTECTION OF THE LAW AND IT AMOUNTED TO A DENIAL OF DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

THE INJUNCTION CLAIMED WAS GOOD AND RESTRAINED THE COMMISSION BY THE RESPONDENTS OF UNLAWFUL ACTS AND, IN EQUITY, FARMER BROS. CO. WERE ENTITLED TO THE INJUNCTION, AND ITS DENIAL BY THE SUPREME COURT OF CALIFORNIA AMOUNTS TO A DENIAL OF EQUAL PROTECTION UNDER THE LAW AND A DENIAL OF DUE PROCESS.

## Argument

I

IN HOLDING THAT THE SO-CALLED "HOT CARGO AND SECONDARY BOYCOTT LAW" WAS SO UNCERTAIN THAT IT VIOLATED DUE PROCESS OF LAW AS PROTECTED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND THAT IT WAS UNCONSTITUTIONAL FOR THE REASON THAT IT ABRIDGED THE RIGHT OF FREE SPEECH AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION.

**The law was constitutional and it was for the State of California to determine the policy of the State with reference to fixing the boundaries and the area within which labor disputes might be conducted.**

**The People of the State of California acted in determining this policy in the first instance through the Legislature. Then, they themselves enacted this law by referendum. It is not for the courts to disturb that policy-making by the Legislature and the people, unless it plainly and clearly appears that it is an abridgment of important constitutional rights—which, we assert, it is not. The law is constitutional.**

See: *Duplex Printing Co.* v. *Deering*, 254 U. S. 433.

"Picketing" involves more than expression. This was effectively demonstrated in *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, the Court said:

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"It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But the recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.

"In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. (Citing Teller and other writers.) We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into *doctrinaire dogma*. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill* v. *Alabama*, 310 U. S. 88, 103, 104 (60 S. Ct. 736, 84 L. Ed. 1093.)

"It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end

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when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In the dissenting opinion of Mr. Justice Shenk, *In Re Blaney*, 30 A. C. 648, 666, 672, cases in support of the law are assembled.

> "Picketing by an organized group is more than free speech."
>
> *Allen Bradley Local* v. *Wisconsin Employment Relation Board*, 315 U. S. 740;

*Dorchy* v. *Kansas*, 272 U. S. 306, which upheld a Statute of Kansas making it unlawful to conspire to induce others to quit their employment, etc.

Numerous laws have been upheld as constitutional enactments by Legislatures, particularly dealing with combinations in restraint of trade, price fixing, concerted activities of numerous kind. Even in California, the Unfair Practices Act, Statutes 1931, page 508 as amended by Act 8787 of the General Laws, was held constitutional.

One of these "fair trade acts" was under consideration by the United States Supreme Court in the case of *Old Dearborn Distributing Company* v. *Seagram-Distillers Corp.*, 299 U. S. 183. See also, *Wholesale Tobacco Dealers Bureau of Southern California* v. *National Candy & Tobacco Company*, 11 Cal. (2d) 634.

The entire argument advanced by the Supreme Court of California seems to follow that of the District Court in the case of *United States* v. *Petrillo*, 68 F. Supp. 845, which case was reversed by the Supreme Court of the United States in *United States* v. *Petrillo*, Supreme Court Reporter, Volume 67, No. 16, Page 1538.

## II

IN REFUSING TO GRANT RELIEF TO THE PETITIONERS IN INTEREST UNDER THE FACTS SET FORTH IN THE COMPLAINT, THE SUPREME COURT DEPRIVED THE PETITIONERS IN INTEREST OF THE EQUAL PROTECTION OF

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THE LAW AND IT AMOUNTED TO A DENIAL OF DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

THE INJUNCTION CLAIMED WAS GOOD AND RESTRAINED THE COMMISSION BY THE RESPONDENTS OF UNLAWFUL ACTS AND, IN EQUITY, FARMER BROS. CO. WERE ENTITLED TO THE INJUNCTION, AND ITS DENIAL BY THE SUPREME COURT OF CALIFORNIA AMOUNTS TO A DENIAL OF EQUAL PROTECTION UNDER THE LAW AND A DENIAL OF DUE PROCESS.

We contend that Farmer Bros. Co. are denied equal protection of the law in that the Labor Unions are permitted to make unlawful demands upon them. They are permitted to interfere with common carriers in the transaction of their bounden duties and Farmer Bros. Co. are left without remedy if this decision is to stand.

The decision in *N. W. Pac. R. R. Co.* v. *Lumber & S. W. Sawmill Workers Union*, 31 A. C. 448, where relief was granted to a common carrier to restrain interference with them is to us a gross denial of equal protection of the laws, and the decision of the Supreme Court of the State of California in the Lillefloren cases, if permitted to stand, leaves Farmer Bros. Co. without any remedy and is a violation of due process of law. Their business is entitled to protection. The demands were unlawful. (See *Dorchy* v. *Kansas*, 272 U. S. 306; *U. S.* v. *Petrillo, supra; Allan Bradley Local* v. *Wisconsin Employment Board*, 315 U. S. 740; *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722; *James* v. *Marinship Corporation*, 25 Cal. (2d) 721.

In fact, in the case of *Bautista* v. *Jones*, 25 Cal. (2d) 746, an injunction to restrain picketing and boycotting to carry out concerted effort to bring about the acceding to an unlawful demand of the union was made. The injunction was sustained and there the California Supreme Court reviewed all of the cases upon the subject. Here, they have completely reversed their position and it amounts to a de-

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nial of equal protection to Farmer Bros. Co. and a denial of due process.

**Conclusion**

In the light of these circumstances, it appears that, in the instant case, the law should be held constitutional, and the Supreme Court of California decision reversed, and a denial of the equitable process of the court under the facts recited establishes that the petitioner in interest Farmer Bros. Co., has been deprived of Federal due process by the judgment of the State Supreme Court of California.

This Court should grant certiorari and order the judgment below reversed.

The People of the State of California established the policy of that State with reference to the matters herein involved and no showing has been made that the act in question is a violation of law. It represents a proper exercise of the power of the State in the public welfare, to define and to limit the area within which industrial combatants may wage warfare, such conduct, at best, being harmful to the general welfare of the State.

Respectfully submitted,

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HAROLD W. KENNEDY,
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*The Superior Court.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., a corporation, the real party in interest,

*Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

On Writ of Certiorari to the Supreme Court of California.

## BRIEF FOR PETITIONERS.

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## SUBJECT INDEX


PAGE

Opinions below ..... 1

Jurisdiction ..... 2

Questions presented ..... 2

Statutes involved ..... 3

Statement ..... 7

Specification of errors to be urged ..... 12

Summary of argument ..... 12

Argument ..... 15

I.

Sections 1131-1136 of the Labor Code of California are constitutional, clear, certain, and readily notify a person of ordinary intelligence of the acts denounced. It was a proper exercise of the police power of the state ..... 15

II.

The denial by the Supreme Court of California to the petitioner, Farmer Bros. Co., the real party in interest, of relief under the facts set forth in the complaint deprived the petitioner in interest of the equal protection of the law and due process of law, in violation of the Fourteenth Amendment to the Constitution ..... 47

Conclusion ..... 49

## TABLE OF AUTHORITIES CITED


| Cases. | PAGE |
|---|---|
| Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797 | 42 |
| Apex Hosiery Co. v. Leader, 310 U. S. 469 | 43 |
| Bakery & Pastry Drivers etc. v. Wohl, 315 U. S. 769 | 44 |
| Bautista v. Jones, 25 Cal. 2d 746 | 44 |
| Bedford Company v. Stone Cutters Assn., 274 U. S. 37 | 42 |
| Bell, In re, 19 Cal. 2d 488 | 29, 30 |
| Blaney, In re, 30 A. C. 648, 184 P. 2d 892 | 1, 15, 18, 22, 25, 27, 29, 30, 41, 44 |
| Buchsbaum Company v. Beaman, 14 Fed. Supp. 444 | 19 |
| C. S. Smith Metropolitan Market Co. v. Lyons, 16 Cal. 2d 389 | 15, 41, 43 |
| Carpenters & Joiners Union v. Ritter's Cafe, 315 U. S. 722 | 14, 44 |
| Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 66 L. Ed. 239 | 26, 32 |
| Dorthy v. Kansas, 264 U. S. 286 | 21 |
| Duplex Printing Co. v. Deering, 254 U. S. 443 | 42 |
| Electric Bond and Share Co. v. Securities and Exchange Commission, 303 U. S. 419 | 20 |
| James v. Marinship Corp., 25 Cal. 2d 721 | 44 |
| Lawlor v. Loewe, 235 U. S. 522 | 42 |
| McKay v. Retail Automobile Salesmen's Local Union 1067, 16 Cal. 2d 311 | 15, 41, 43 |
| National Labor Relations Board v. Jones and Laughlin, 301 U. S. 1, 81 L. Ed. 893 | 23, 25, 26, 43 |
| Nebbia v. New York, 291 U. S. 502 | 46 |
| New York ex rel. Hatch v. Reardon, 204 U. S. 152 | 27 |
| Northwest Pac. R. R. Co. v. Lumber & S. W. Union, 31 A. C. 448 | 48 |
| Opp Cotton Mills v. Adm. of Wage and Hour Div., Dept. of Labor, 111 F. 2d 23, 312 U. S. 126 | 19 |


POOR COPY

PAGE

Park & Tilford Import Co. v. International, etc. of Teamsters, 27 Cal. 2d 599 ..... 41, 47
Parkinson Co. v. Bldg. Trades Council, 154 Cal. 581 ..... 43
Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109 ..... 21
Smith v. Cahoon, 283 U. S. 553 ..... 32
South Utah Mines & Smelters v. Beaver County, 262 U. S. 325, 67 L. Ed. 1004 ..... 21
Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55 ..... 21
United States v. Congress of Industrial Organization, 92 L. Ed. 1315 ..... 24
United States v. Hutcheson, 312 U. S. 219 ..... 42
United States v. Petrillo, 332 U. S. 1 ..... 33
Williams v. Standard Oil Co. of Louisiana, 278 U. S. 235 ..... 19
Yazoo Railroad v. Jackson Vinegar Co., 226 U. S. 217 ..... 26
Yick Wo v. Hopkins, 118 U. S. 220 ..... 48

STATUTES

California Civil Code, Sec. 2169 ..... 42
California Civil Code, Sec. 2170 ..... 42
California Constitution, Art. XII, Sec. 21 ..... 42
California Labor Code, Chap. 8, p. 60 (Deering's Cal. Code) ..... 3
California Labor Code, Secs. 1131-1136 (Stats. 1941, Chap. 623, Sec. 1, p. 2079) ..... 3, 9, 13, 15, 36
Corrupt Practices Act, Sec. 313 ..... 24, 25
Deering's California General Laws, Act 6386, Sec. 19 ..... 42
Fair Labor Standards Act, Sec. 219 ..... 19
Federal Communications Act of 1934, Sec. 608 (47 U. S. C., Sec. 608) ..... 19
Interstate Commerce Act, Sec. 1(4) (49 U. S. C. A., Sec. 1(4)) ..... 42
Judicial Code, Sec. 237(b) ..... 2

PAGE

National Labor Relations Act (29 U. S. C. A., Sec. 151).....41, 47

National Labor Relations Act, Sec. 15 (29 U. S. C., Sec. 165).... 21

Norris-LaGuardia Act (47 Stats. 70, 29 U. S. C., Sec. 101).... 42

Public Utility Act, Sec. 19..... 42

United States Constitution, First Amendment.....2, 12, 13, 34, 46

United States Constitution, Fourteenth Amendment.....
.....2, 3, 12, 13, 46

Wagner Act, Sec. 165..... 19

POOR COPY

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OCTOBER TERM, 1948.

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., a corporation, the real party in interest,

*Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN.

## BRIEF FOR PETITIONERS.

### Opinions Below.

The memorandum of opinion of the Court below, Superior Court of the State of California, in and for the County of Los Angeles, is in the Response of Farmer Bros. Co., Objections to Granting Review by the Supreme Court of California [R. 169]. The opinions in the Supreme Court of California [R. 215]; Dissenting Opinion [R. 216] are reported in 31 Advance California Reports, page 460, 180 P. 2d 265. The Opinion relied upon by the Supreme Court of California holding unconstitutional the law here involved, *In re Blaney* [R. 181], Dissenting Opinion [R. 199], is reported in 30 Advance California Reports, page 648; Dissenting Opinion, page 666 (184 P. 2d 892).

## Jurisdiction.

The judgment of the Supreme Court of California was entered February 5, 1948 [R. 215]. It ordered that the judgments of the Superior Court be reversed as follows: "The judgments and orders of commitment in each of the above entitled cases are annulled and the petitioners are discharged." The constitutional issues here presented were urged in the Trial Court [R. 118, 107, 121], where the demurrers of Lillefloren and the others were overruled in the Court below. The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended. Petition for a Writ of Certiorari was filed on August 2, 1948, and was granted on October 11, 1948.

## Questions Presented.

Sections 1131-1136 of the Labor Code of California defines certain acts which are called hot cargo and secondary boycotts. Certain definitions are given and provision is made for injunctive relief and recovery of damages. The act in substance denounces any act, combination or agreement which directly or indirectly causes, induces, or compels a violation of the provisions of the act or inflicts any loss, injury or damage, and defines "hot cargo" and "secondary boycott."

The questions presented are:

1. Whether the act is so uncertain that a person does not know in advance whether its application to his conduct will be constitutional or unconstitutional, and whether it violates due process of law as protected by the Fourteenth Amendment to the Constitution, and abridges free speech as safeguarded by the First Amendment to the Constitution?

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2. Whether the denial by the Supreme Court of California to the petitioners of relief under the facts set forth in the complaint, deprives the petitioners in interest of the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution?

## Statutes Involved.

The statutory provisions involved are Sections 1131-1136 of the Labor Code of California (Statutes 1941, Ch. 623, §1, p. 2079), adopted by referendum vote at a general election of the people of California November 3, 1942, subsequent to enactment by the legislature of California, Deering's California Code (Labor Code, Ch. 8, p. 60):

"CHAPTER 8

HOT CARGO AND SECONDARY BOYCOTTS

(Added by Stats. 1941, ch. 623, §1, p. 2079; adopted by referendum vote at general election of November 3, 1942.)

§1131. Declaration of unlawfulness.

§1132. Acts, etc., causing violation of chapter.

§1133. Injunctive relief: Recovery of damages.

§1134. Definitions.

§1135. Duration of statute.

§1136. Invalidity of provision or of application to particular person or circumstance.

§1131. Declaration of unlawfulness. The 'hot cargo' and 'secondary boycott' are hereby declared to be unlawful. (Added by Stats. 1941, ch. 623, §1, p. 2079.)

The statute by which this chapter was added further contained the following section:

§2. (Purposes of act.) This act is enacted for the purpose of preserving tranquility among the citizens of this commonwealth and to insure during this present critical period of National emergency and intensive armament the unobstructed production and distribution of the products of our factories and fields, for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this State. (Stats. 1941, ch. 623, §2.)

Anno: See 12 McK. Dig. Labor, §22; 15 Cal. Jur. 578; 31 Am. Jur. 957 *et seq.*

§1132. Acts, etc., causing violation of chapter. Any act, combination or agreement which directly or indirectly causes, induces or compels a violation of any of the provisions of this chapter, or inflicts any loss, injury or damage on anyone because of his refusal to violate any of the provisions of this chapter shall be unlawful. (Added by Stats. 1941, ch. 623, §1, p. 2079.)

§1133. Injunctive relief: Recovery of damages. Any person injured or threatened with injury by any violation of any of the provisions of this chapter shall be entitled to injunctive relief therefrom in a proper case, and to recover any damages resulting therefrom in any court having jurisdiction in the State of California. (Added by Stats. 1941, ch. 623, §1, p. 2079.)

§1134. Definitions.

(a) ('Hot Cargo.') As used in this chapter, 'hot cargo' means any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employers to handle

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goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization.

(b) ('Secondary Boycott.') As used in this chapter, 'secondary boycott' means any combination or agreement to cease performing, or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the latter and his employees or a labor organization.

(c) ('Labor organization.') As used in this chapter, 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(d) ('Employer.') As used in this chapter, the term 'employer' includes any person acting in the interest of an employer, directly or indirectly and any association of employers, including growers and other hirers of labor.

(e) ('Employee.') As used in this chapter, the term 'employee' includes any natural person who works for any person for compensation. (Added by Stats. 1941, ch. 623, §1, p. 2079.)

§1135. Duration of statute. This chapter shall be in effect until May 1, 1943, and thereafter:

(a) During the continuance of the existence of the National emergency declared by the President of the United States to exist, by his proclamation issued under date of September 8, 1939.

(b) During any period of war between the United States of America and any foreign power, legally declared to exist. (Added by Stats. 1941, ch. 623, §1, p. 2080.)

§1136. Invalidity of provision or of application to particular person or circumstance. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Added by Stats. 1941, ch. 623, §1, p. 2080.)"

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## Statement.

On May 21, 1946, petitioner in interest, Farmer Bros. Co., a corporation, filed a suit in the Superior Court of the State of California in and for the County of Los Angeles [R. 2]. Among the defendants therein and respondents herein were Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen, all of whom were alleged to be business agents and representatives of certain labor union defendants [R. 9-11-12]. The allegations of the complaint may be summarized as follows:

Farmer Bros. Co. is a corporation organized under the laws of the State of California, having its principal place of business in Los Angeles, California, and for more than twenty years had been engaged in the business of roasting, packaging, distributing and selling coffee, tea, spices, with restaurant crockery to cafes, restaurants, coffee shops and institutions. The company also engaged in manufacturing and assembling coffee-brewing and coffee-dispensing machinery, stoves and urns. The business was both intra-state and inter-state. The company imported raw coffee from Central and South America, processing it at its plant in Los Angeles and then shipping it for distribution and sale to various points, including branch offices throughout California, Oregon, Nevada, Arizona, Idaho, Texas, Utah and New Mexico [R. 9]. That in connection with the distribution of its products, the company used licensed common carriers, such as steamship companies, railroad companies and trucking concerns [R. 10].

That in the conduct of its business, the company employed approximately three hundred persons; that there was not any labor controversy or disputes between the

company and its employees; that the defendant unions did not represent a majority of the company's employees for collective bargaining purposes, but notwithstanding, the unions and their agents, the respondents herein, demanded that the company sign a closed shop contract.

The company protested that under the Wagner Act they could not do so unless the unions represented a majority of its employees, the company being in interstate commerce and subject to the Wagner Act.

The unions reported:

> "You had better sign this contract because we could picket this place for ten years and we don't think we could get a majority of your employees to join our unions." [R. 15.] [C. R. 19.]

The company refused to sign such a contract in the absence of a showing that the unions represented a majority of its workers for collective bargaining purposes, or an election to determine that question, to be conducted by the N. L. R. B. The unions placed the company on the unfair list and then commenced notifying railroads, steamship companies, common carriers and suppliers of the company that if they did business with the company such concerns would have trouble, that their employees would be called out on strike [Par. XXV, Complaint, R. 20].

As a result, the company had several carloads of coffee, valued in excess of fifty thousand dollars ($50,000.00) kept in San Pedro Harbor, California [Par. XXVI, Complaint, R. 21]. The company was practically stopped from doing business with common carriers [Pars. XXIX, XXX, XXXI of Complaint, R. 22-30].

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The complaint alleges that the defendant unions therein named and others as agents thereof, including the respondents herein, entered into a combination and agreement in violation of the statute herein involved, to carry out the purposes of such agreement and to force Farmer Bros. Co. to execute a closed shop contract [Pars. XXXIV, XXXV, XXXVI, XXXVII, XXXVIII and XXXIX, R. 32-35]. Complaint also contained an allegation that the company had "no plain, speedy or adequate remedy at law," and unless restrained from performing and committing the unlawful acts complained of, the defendants therein would cause irreparable damage and injury to the company [Par. XLI, Complaint, R. 36]. The complaint then alleges a second cause of action, in Paragraphs I, II and III of the second cause of action, and invokes Sections 1131-1136, inclusive, of the Labor Code and alleges it had been damaged in the sum of twenty-five thousand dollars ($25,000.00).

The prayer follows asking for injunctive relief, both temporary and permanent. Affidavits of Ted Ehler, Tony Sinozich and Louis Clemens were filed, and application for a temporary restraining order and order to show cause were made, and on May 22, 1946, the Superior Court of the State of California in and for the County of Los Angeles, upon the complaint and such affidavits, issued a temporary restraining order and order to show cause [R. 54], and thereafter demurrers of various defendants were filed [R. 56-57-69] raising the constitutional questions and extensive memoranda of points and authorities were filed [R. 62].

After issuance of the temporary restraining order, the respondents herein were each duly served with the same

and thereafter a joint affidavit of Ray C. Turnbull, Roy F. Farmer and Rupert B. Turnbull, in support of the company's application for the alleged contempt of Gay Lillefloren, was filed; and subsequently an affidavit of Roy F. Farmer for contempt of Gay Lillefloren and L. L. Sylvane, was filed [R. 81]; and thereafter an affidavit as to Homer Ford, Russell Marks and Irv Magisen, said affidavit being of Roy F. Farmer, was filed [R. 97], and an order to show cause was issued by the Superior Court [R. 95], directing Gay Lillefloren, Homer Ford, Russell Marks and Irv Magisen to appear and show cause why they should not be punished for contempt of court [R. 96].

The charging affidavit for contempt alleged: That after the filing of the complaint by the company, the temporary restraining order had issued, and the complaint was incorporated in its entirety in the charging affidavit, by reference; that the respondents herein had been duly served with the same, and it also alleged that notwithstanding that they had interfered with the General Steamship Corporation, the Indies Terminal Company and the Sheriff of Los Angeles County in the delivery of several hundred sacks of green coffee by the steamship companies, which were alleged to be common carriers, to Farmer Bros. Co., said respondents threatened the common carriers that unless they ceased delivering coffee to the company that the dock "would be tied up."

The respondents herein appeared by demurrer charging that it was a violation of their constitutional rights and violated the Fourteenth Amendment to the Constitution

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[R. 107-118]. Demurrers to the contempt affidavits were overruled and thereafter the contempt matters were set down for trial and tried before the Honorable Jess E. Stephens, Judge Presiding, Department 30 of the Superior Court of the State of California in and for the County of Los Angeles. The trial extended over some days, argument was made to the Court and briefs filed. Thereafter the Court rendered a memorandum opinion. [See Response of Farmer Bros. Co., Objections to Granting Review, R. 169.]

After such opinion by the Court, judgment and warrants of commitment on conviction of contempt of Court were rendered against respondents, Homer Ford [R. 124], against Gay Lillefloren [R. 146], against Russell Marks [R. 131], against Irv Magisen [R. 138], and against Sylvane [R. 156].

Thereafter, petitions were filed with the Supreme Court of California for review. The matters were argued, submitted and decided by the Supreme Court of California as hereinbefore indicated.

Thereafter, a petition was filed by the Superior Court of the State of California in and for the County of Los Angeles and the respondent in interest, Farmer Bros. Co., seeking a rehearing by the Supreme Court of California. This was subsequently denied by the Supreme Court of California (31 A. C. No. 13, Minutes, page 5), Justice Shenk voting for rehearing.

## Specification of Errors to Be Urged.

The Supreme Court of California erred:

1. In holding that the so-called "hot cargo and secondary boycott law" was so uncertain that it violated due process of law as protected by the Fourteenth Amendment to the Constitution and that it was unconstitutional for the reason that it abridged the right of free speech as guaranteed by the First Amendment to the Constitution.

2. In refusing to grant relief to the petitioners in interest under the facts set forth in the complaint, the Supreme Court deprived the petitioners in interest of the equal protection of the law and it amounted to a denial of due process of law in violation of the Fourteenth Amendment to the Constitution.

The injunction claimed was good and restrained the commission by the respondents of unlawful acts and, in equity, Farmer Bros. Co., were entitled to the injunction, and its denial by the Supreme Court of California amounts to a denial of equal protection under the law and a denial of due process.

## Summary of Argument.

The petitioner in interest, a concern operating in intrastate and interstate commerce throughout California, Oregon, Nevada, Idaho, Utah, Texas and New Mexico, had demands made upon it by labor unions that it sign a "closed shop" contract. This company's representative stated it could not do so until the union represented a majority of its employees for collective bargaining purposes, for the reason they were engaged in interstate commerce and under the Wagner Act could not lawfully make

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such a contract. The company stated it would consent to an election.

The unions placed the company on the "unfair" list, notified railroads, steamship companies, common carriers, suppliers and customers of the company that they could not do business with the company and that if they did their employees would be called out on strike, that they would be "tied up."

The company was unable to obtain shipments by common carrier or ship by common carrier, and many of their suppliers and customers ceased doing business with them.

The company filed a suit in the Superior Court of the State of California, in and for the County of Los Angeles, seeking general equitable relief and an injunction; and in a second cause of action availed itself of the so-called "hot cargo and secondary boycott" law as contained in Sections 1131-1136 of the Labor Code of California.

Upon the filing of the complaint and accompanying affidavits the Court issued an injunction. Demurrers were filed attacking the constitutionality of Sections 1131 to 1136 of the Labor Code of California, and thereafter the respondents, being representatives of the named defendant unions in the suit and having been served with copies of the injunction, pursued a course of conduct interfering with common carriers and others.

Affidavits seeking a contempt citation were filed, an order to show cause issued, and the respondents brought before the Court and tried. They again raised the question of the constitutionality of the so-called "hot cargo and secondary boycott" law, contending it was in violation of the Fourteenth Amendment and of the First Amendment to the Constitution.

The Trial Court convicted them, they were sentenced, and upon review the California Supreme Court reversed their conviction upon the ground that the law invoked was unconstitutional.

It is our contention that the so-called "hot cargo and secondary boycott" law is constitutional; that it was within the power of the people of the State of California in the first instance through the legislature, and ratified by the people in a state-wide referendum, to determine the policy of the state with reference to labor matters and in the general welfare of the state and under police powers to fix the limits within which labor combatants might wage their warfare.

It is our contention that this law does not restrict legitimate picketing. In fact, the injunction itself in this case so stated. This law is aimed at agreements, combinations, conspiracies and understands between employees of various companies doing business with a person involved in a labor dispute by which such employees for the common carriers, customers and suppliers of the company engaged in the dispute, will refuse to perform services for their respective employers for which they are hired and paid, in restraint of trade.

It is our contention that the law was a proper exercise of the legislative function in the public welfare. (See *Carpenters & Joiners Union v. Ritter's Cafe,* 315 U. S. 722, 728.)

We further assert that the California Supreme Court should have invoked the severability clause, and could have done so, in order to save this legislation, that being its obligation under the law so to do.

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## ARGUMENT.

### Sections 1131-1136 of the Labor Code of California Are Constitutional, Clear, Certain, and Readily Notify a Person of Ordinary Intelligence of the Acts Denounced. It Was a Proper Exercise of the Police Power of the State.

Sections 1131-1136 of the Labor Code of California are plain, certain and readily understood and represent nothing more than the right of the State to protect against abuses of the right of free speech.

The State had a right to impose limits on the concerted action of labor unions, its members and agents, and this Act represented the policy of the people of the State of California in such matters, as indicated by the enactment of the law by the legislature in the first instance, and its subsequent ratification in referendum by the people of the State of California. (*In re Blaney,* 30 Advance California Reports 648, 666.)

The decisions sought to be reversed in this proceeding were based upon the decision by the California Supreme Court in the case of *In re Blaney, supra,* so therefore we must turn to the *Blaney* case for a proper consideration of this review.

The Act under consideration resulted from the numerous statements by the Supreme Court of the State of California to the effect that "with reference to the power that is placed in the hands of a few persons by combinations and organizations on either side, that these are considerations for the law-making power, not for the courts." Citing *C. S. Smith Metropolitan Market Co. v. Lyons,* 16 Cal. 2d 389, 400; *McKay v. Retail Automobile Salesmen's Local Union 1067,* 16 Cal. 2d 311, 331.

At the outset we must assert that this law was not intended to, and we say a fair construction of the law precludes the conclusion that it seeks to prohibit persons from engaging in picketing or from giving publicity to a labor dispute.

The law was enacted to prohibit combinations, agreements and conspiracies to prevent common carriers, suppliers and customers of those who may be engaged in a labor dispute from performing their usual services by combinations, agreements and conspiracies among employees and others to cause the employees of such carriers, suppliers and customers from performing their duties and services for their respective employers, for which they are hired and paid, which such agreements would be in restraint of trade. It is the agreement, concerted activity, and conspiracy that is denounced by the law, and we assert that the people of the State of California had the right to set the policy and to limit the area within which industrial combatants might wage their warfare and to make unlawful conspiracies and agreements as are in the Act defined. Each case before this Court, or any other Court, must rest upon the facts of that case, not upon imaginary conclusions or imaginary sets of circumstances. In this case the complaint itself alleges that the company was in inter-state commerce doing business throughout the West from California to Texas [R. 8]; that the unions did not represent a majority of the employees of the company, if anyone; and the unions recognized they could not get a majority of the employees to join the unions [R. 15]. The company refused to sign a contract claiming they could not do so under the Wagner Act unless the unions represented a majority of their workers, and thereupon the company was placed upon the unfair list by the unions,

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and the unions notified railroads, steamship companies, common carriers, suppliers and customers of the company that if they did business with the company such concerns would have trouble, that their employees would be called out on strike [Par. XXV Complaint, R. 20]. As a result the company had several carloads of coffee valued in excess of $50,000.00 tied up in San Pedro Harbor, California [Par. XXVI Complaint, R. 21]. The company was practically unable to do business with common carriers [Pars. XXIX, XXX, XXXI Complaint, R. 32]. The complaint then alleges that the defendant unions and the agents named therein, including the respondents herein, entered into a combination and agreement, in violation of the statute here involved, to carryout the purposes of such agreement and to force Farmer Bros. Co. to execute a closed shop contract [Pars. XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX Complaint, R. 32-35].

The complaint further recites that

> "if the suppliers of plaintiff, the buyers and customers of plaintiff, and the common carriers of plaintiff, hereinbefore named, or any one of them, refuse to conform to and abide by the said notifications and threats made by said defendant unions and their representatives and agents, pursuant to said unlawful combination and agreement, defendants and each of them threaten to carry out said threats and threaten to, and by the means described above will, cause the employees of each of said suppliers, buyers, customers and carriers so refusing, to cease performing any services for their respective employers, for the purpose and with the intent of inducing and compelling said respective employers, suppliers, buyers or carriers of plaintiff, to refrain from doing business

with, or supplying products to, or buying products from, or carrying products to or from the plaintiff." [Par. XXXVIII Complaint, R. 34.]

It was further alleged in the complaint that the defendants, pursuant to the unlawful agreement and combination agreed to and did notify certain suppliers, customers and common carriers of the petitioner in interest herein, that if they continued to do business with the petitioner in interest, supply any products to, purchase any products from, pick up, receive, haul or transport freight or merchandise to or from the petitioner in interest's plant, the defendant unions, including the respondents, would cause the employees of said suppliers, customers and buyers of petitioner in interest to cease performing any services for their employers as long as they, their employers, continued to do business with the petitioner in interest, etc. [Par. XXXV Complaint, R. 32].

The complaint is replete with assertions of the activities done to carry out the unlawful conspiracy and agreement and combination which had for its purpose to keep all of the employees of anybody with whom the petitioner in interest did business, from performing any services for their said employers until the petitioner in interest acceded to the demands of the unions and the respondents herein. In other words, they either had to "give in" or they "would be out of business."

In the *Blaney* case, *supra*, the Supreme Court of California declared invalid and inoperative the "separability clause" which is found in the California secondary boycott statute, which the California court characterized as "an unusual form of separability clause." A study of various laws fails to support any such conclusion, for the separa-

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bility clause contained in the statute here under question is very similar to that to be found in numerous Acts of both the Congress and State Legislatures. For instance, see Section 165 of the Wagner Act; see Section 219 of the Fair Labor Standards Act, and Section 608 of the Federal Communications Act of 1934, Title 47, U. S. C. 608, which is as follows:

> "If any provision of this chapter or application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances, shall not be affected thereby."

See:

*Buchsbaum Company v. Beaman,* D. C. Ill., 14 Fed. Supp. 444;

*Opp Cotton Mills v. Adm. of Wage and Hour Div., Dept. of Labor,* 111 F. 2d 23, 312 U. S. 126.

In the case of *Williams v. Standard Oil Co. of Louisiana,* 278 U. S. 235, where the Supreme Court had before it the constitutionality of a state statute concerned with fixing prices at which commodities might be sold, services rendered and property used, the validity of a saving clause was discussed, and by reference to that case the similarity of such clause to the one involved here is quite apparent. The Court said:

> "Finally, it is said that even if the price-fixing provisions be held invalid, other provisions of the Act should be upheld as separate and distinct. This contention is emphasized by reference to Section 12 of the Act which declares 'If any section or provision of this Act shall be held to be invalid, this shall not

affect the validity of other sections or provisions hereof.' Citing cases Hill v. Wallace, 259 U. S. 44, 71."

In that case it was said:

"It is said that such a legislative declaration serves to assure the Courts that separate sections or provisions of a partly invalid act may be properly sustained without hesitation or doubt as to whether they would have been adopted even if the legislature had been advised of the invalid part. . . ."

In the case of *Electric Bond and Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, where they were discussing severability of registration provisions of the Public Utility Holding Company Act, the severability clause stated:

"If any provision of this title or application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

The Court held in effect:

"This provision reverses the assumption of inseparability . . . that the legislature intended the Act to be effective as an entirety or not at all."

It would appear therefrom that it is the opinion of the Supreme Court of the United States that when the validity of an Act or its application is in question, divisibility in order to save the Act or portions thereof, is the guiding principle. Invalid parts and invalid application may be

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struck down and the remainder enforced, depending upon the circumstances.

We think it will be readily conceded that the current National Labor Relations Act is probably one of the most discussed and thoroughly studied legislative enactments by Congress in recent years. May we point out that Section 15, the separability clause of the Act, provides:

> "If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby." 29 U. S. Code, Sec. 165.

Which section, of course, is an exact duplicate of the similar section in the Wagner Act. It was intended to and devised to meet a situation such as we have in this case.

While ordinarily the Supreme Court of the United States accepts as conclusive the decision of a state supreme court on the separability of state statute (*Dorchy v. Kansas*, 264 U. S. 286), the decision on the point of separability in this case is inextricably bound up and in fact dependent upon the decision on the constitutionality of the state statute under the Constitution of the United States, and the entire matter is therefore appropriately before this Court for review.

*Red Cross Line v. Atlantic Fruit Co.*, 264 U. S. 109;

*Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55;

*South Utah Mines & Smelters v. Beaver County*, 262 U. S. 325, 331; 67 L. Ed. 1004.

In fact, the decision of the State Supreme Court involves three interlocking principles so closely related that it will be necessary to discuss them virtually collectively.

First: The state court, instead of giving the statute a construction which would have upheld its constitutionality, did exactly the opposite.

Second: The Court decided the case, not upon the facts before it, but upon imaginary or conjectural cases or sets of facts which were in no way involved in the case before the Court, or necessary to the decision.

Third: Having found that, as applied to these *imaginary* or *conjectural* cases, the statute was unconstitutional, the California Court went on to say that it could not be applied to *other* facts or circumstances because, in calling upon the Courts to determine in each case whether the statute could be constitutionally applied to the facts before the Court, the statute failed to state a definite criteria of guilt.

In each instance the decision of the state Court was contrary to the decisions of this Court, as will be shown.

The points will be treated separately to the extent possible but excerpts from the decisions of this Court will frequently treat of more than one point in the same quotation.

The Supreme Court of California, in ruling the state statute, together with its separability clause, to be unconstitutional and void, declared in *In re Blaney, supra* (p. 660):

> "By this type of provision, the Legislature has in effect sought to delegate to the courts the task of rewriting the statute, directing them to set forth, in a succession of judicial opinions upholding or annulling

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judgments enforcing the provisions of the act, thus determining in advance the extent to which the Legislature may go in providing regulations in this field. It is an inescapable result that, in the meantime, those individuals who guess correctly will be released by the courts, and those who guess incorrectly will be punished; but that no one, employer, employee, union or any one will know what the law is until, after violation of the statute, and judgment thereon, a higher court is given an opportunity to pass on the question of its validity as applied to the particular 'person or circumstance.'

"Such a theory of judicial construction cannot be supported on either practical or legal grounds, and two well-settled propositions condemn the legislation under review here *in toto:* First, where an entire statute in general terms infringes upon the constitutional right of free speech, it will be stricken down in its entirety; and second, where, by reason of invalidity of *some applications* of a criminal statute it fails to state definite criteria of guilt, the whole constitutes an unconstitutional denial of due process of law." (Emphasis added.)

The doctrine that a Court should construe a statute so as to be constitutional or, conversely, should avoid, if possible, a construction which would render a statute unconstitutional, is so well settled as to require no citation of authorities. However, see *N. L. R. B. v. Jones and Laughlin,* 301 U. S. 1; 81 L. Ed. 893.

In a recent case before this Court exactly the same claim was made to this Court as was made to the California Court, namely, that the statute in question in general terms infringes upon the constitutional right of free

speech. Yet this Court deliberately chose not to give the statute such construction.

In *United States of America v. Congress of Industrial Organizations* (92 L. Ed. 1315), this Court declared that an indictment charging that the CIO and its president, in a regular periodical published with union funds, urged all members of the CIO to vote for a certain candidate for Congress, did not set forth a violation of Section 313 of the Corrupt Practices Act.

This Court said (92 L. Ed. 1324):

> "If Section 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality."

And again, this Court said (92 L. Ed. 1326):

> "It is our conclusion that this indictment charges only that the CIO and its president published with union funds a regular periodical for the furtherance of its aims, that President Murray authorized the use of those funds for distribution of this issue in regular course to those accustomed to receive copies of the periodical and that the issue with the statement described at the beginning of this opinion violated Section 313 of the Corrupt Practices Act.
>
> *"We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication. We do not think Section 313*

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> *reaches such a use of corporate or labor organization funds.* We express no opinion as to the scope of this section *where different circumstances exist* and none upon the constitutionality of the section." (Emphasis supplied.)

This is directly contrary to the decision of the California Court in the *Blaney* case. Under the doctrine of the *Blaney* case the language of Section 313 of the Corrupt Practices Act *could* have been applied to the publication in question. If, as so applied to those circumstances, the statute was unconstitutional, it could not be applied to *any other circumstances,* for, under the reasoning of the California Court, if it is left to the Court to determine the circumstances to which the statute may be applied and those to which it may not be applied, the statute is void and unconstitutional as failing to provide an ascertainable standard of built.

In *N. L. R. B. v. Jones and Laughlin,* 301 U. S. 1; 81 L. Ed. 893, it was argued that the preamble to the N. L. R. A. and the legislative history of the N. L. R. A. demonstraeed that it was the intent of the legislation to supervise *all* industrial labor relations within the nation in the light of which its scope could not be limited either by construction or by the application of the separability clause. But this Court declared:

> "We have repeatedly held that as between two possible interpretations of a statute by one of which it would be unconstitutional, and by the other valid, our plain duty is to adopt that which would save the act. Even to avoid a serious doubt, the rule is the same. (Citations.)

"We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority."

In a companion decision, rendered the same day as the *Jones and Laughlin* decision, this Court said in *Associated Press v. N. L. R. B.* (301 U. S. 103):

"Courts deal with cases upon the basis of the facts disclosed, never with non-existent and assumed circumstances."

In *Dahnke-Walker Milling Co. v. Bondurant,* 257 U. S. 282, 66 L. Ed. 239, this Court said:

"A statute may be invalid as applied to one state of facts and yet valid as applied to another. (Citing cases.)

"Besides a litigant can be heard to question a statute's validity *only when, and so far as it is being or is about to be applied to his disadvantage."* (Citing cases.) (Emphasis supplied.)

One of the decisions referred to in *Dahnke-Walker* opinion is *Yazoo Railroad v. Jackson Vinegar Co.,* 226 U. S. 217. This case involved a statute imposing a penalty of $25.00 on common carriers failing to settle claims within sixty days of notice of loss or damage. The railroad company claimed that the statute was unconstitutional because it imposed a penalty on the carrier irrespective of whether the claim presented to it was reasonable or excessive and regardless of whether or how much the actual recovery fell short of the amount claimed. The Court said:

"But it is not open to the railway company to complain on that score. It has not been penalized for fail-

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ing to accede to an excessive or extravagant claim, but for failing to make reasonably prompt settlement of a claim which upon due inquiry has been pronounced just in every respect. Of course the argument to sustain the contention is that if the statute embraces cases such as are supposed, it is void as to them, and if so void, is void *in toto. But this court must deal with the case in hand and not with imaginary ones.* It suffices therefore to hold that as applied to cases like the present, the statute is valid. * * *" (Emphasis supplied.)

Again, in *New York ex rel. Hatch v. Reardon,* 204 U. S. 152, this Court said:

"But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the constitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if, for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all." (Citing cases.)

The statute in question does not violate the Constitution of the United States. The California Court in its opinion recognizes (*In re Blaney, supra,* p. 659):

"That the general presumption of constitutionality fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. *This is possible*

> and proper where the language of the statute *is mechanically severable,* that is, where the valid and invalid parts can be separated by paragraph, clause, phrase, or even single words." (Emphasis supplied.)

The statute is mechanically severable in exactly the manner the California Court indicated.

Turning first to the secondary boycott provisions of the statute, the statute declares:

> "As used in this chapter, 'secondary boycott' means any combination or agreement to cease performing or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees * * *."

If the California Court had followed its own doctrine and deleted phrases or even single words so that the statute would read:

> "Secondary boycott means any combination or agreement to cease performing * * * any services for any employer * * * for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of, any other employer because of a dispute between the latter and his employees"

the statute would have clearly and explicitly defined a secondary boycott or secondary strike which was clearly within the power of the state to prohibit and which invaded the constitutional right of free speech of no one.

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It is interesting to note that in the *Blaney* case the California Court relied upon its previous decision in the matter of *In re Bell,* 19 Cal. 2d 488. But in the *Bell* case the California Court did exactly what it refused to do in the *Blaney* case. The *Bell* case involved an anti-picketing ordinance, reading in part as follows:

> "Section 3. It is unlawful for any person to beset or picket the premises of another or any approach thereto where any person is employed or seeks employment, or any place or approach thereto where such employee or person seeking employment lodges or resides, for the purpose of inducing such employee or the person seeking employment by means of compulsion, coercion, intimidation, threats, acts of violence or fear, to quit his or her employment, or to refrain from seeking or freely entering into employment."

With reference to this provision, the California Court said:

> "Section 3 of the ordinance likewise makes conduct generally recognized as peaceful picketing unlawful. Peaceful picketing in the course of a labor dispute involves besetting the premises of another for the purpose of inducing employees to quit their employment or dissuading others from seeking employment. The fact that to some extent compulsion, coercion, intimidation, or threats are employed does not detract from its peaceful nature so long as they constitute only economic, moral, or social pressure and not the pressure of violence. (Citations.) The character of the picketing is determined not by the existence of a threat but by what is actually threatened. (Citations.) A picket may point to the possibility of oust-

ing from the union any employee crossing the picket line and thereby compel or coerce him to quit his employment. The provisions of Section 3 prohibiting such conduct are invalid.

"That part of Section 3, however, prohibiting picketing by acts of violence is valid, for there is no constitutional sanction for violence in labor disputes. When part of a statute is declared unconstitutional, the remainder will stand if it is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute. (Citations.) Not only is the valid part of the present ordinance complete in itself, but the ordinance provides: 'If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.'" (Citations.)

In other words, the California Court struck from the statute the words "compulsion, coercion, intimidation and threats," but, nevertheless, held that the ordinance with only the words, "acts of violence or fear," remaining, was complete, valid and constitutional legislation. If words could be deleted from the ordinance in the *Bell* case to save its constitutionality, it is difficult to see why the same could not have been done in the *Blaney* case in the manner above indicated.

If the State Supreme Court had carried out the provisions of the separability clause of the statute as it applied to persons or circumstances the "hot cargo" provisions of the statute could have been saved as well.

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The statute defines "hot cargo" as follows:

> "As used in this chapter, 'hot cargo' means any combination or agreement resulting in a refusal by employees to handle goods or perform any services for their employer because of a dispute between some other employer and his employees or a labor organization * * *."

Obviously, this provision was intended to apply to a combination or agreement *by the employees themselves* to refuse to handle goods or to perform services for their employer because of a dispute between some other employer and his employees or a labor organization. Let us assume, for the sake of argument, that the statute could not constitutionally be applied to a combination of two or more *other persons* to engage in picketing or to give publicity to a labor dispute which would result in a refusal by employees to perform services for their employer because of a dispute between some other employer and his employees or a labor organization. It could have been applied to a combination or agreement by the employees themselves, for the separability clause specifically provided that:

> "If the application of such provision to any person or circumstance shall be invalid * * *, the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

The California Court held that the statute in question violated the Constitution of the United States in that a particular application of the statute might conceivably

constitute a restraint on free speech. But as this Court has said in the *Dahnke-Walker* case referred to above:

> "A statute may be invalid as applied to one state of facts and yet valid as applied to another."

It is submitted that the statute in question is clearly and readily separable in its application as between: (1) Combinations or agreements by employees themselves to refuse to handle goods or perform any services for their employer; and (2) combinations or agreements by *other* persons resulting in a refusal by employees to handle goods or perform services for their employer. As applied to combinations or agreements of employees themselves, or with others, the statute would not violate the right of free speech guaranteed by the Constitution of the United States, and would have been sufficiently definite to provide an ascertainable standard of guilt.

The California Supreme Court, in refusing to give effect to the separability clause involved in the case at bar, relied upon and quoted from the decision of this Court in *Smith v. Cahoon*, 283 U. S. 553.

That case involved a scheme of regulation applicable to *all* carriers on the public highway. This Court said that the regulations could not be applied to private carriers as well as to public carriers and that the statute was void for uncertainty in that it could not be ascertained to what extent *any* of the regulations were legally applicable to private carriers.

But because it was impossible in that case to ascertain to what extent the regulations were legally applicable to private carriers, it by no means follows that it is impossible in this case, involving a totally different statute, to ascer-

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tain the situations to which this statute could be made legally applicable.

In the case at bar the separability clause would have permitted the Court to hold that the statute was not applicable *at all* to peaceful picketing *per se* or to the mere dissemination of information or other exercise of the right of free speech. In fact, it was the plain duty of the Court so to construe the statute in order to sustain its constitutionality.

The Court could have declared that the statute was intended to be applied only to combinations or agreements by employees themselves or by employees and others, resulting in a refusal by the employees to handle goods or perform services for their employer because of a dispute between some other employer and his employees, or a labor organization.

As so interpreted, the statute would in no way have invaded the constitutional rights of free speech and the statute would have been at least as certain as the language of most anti-trust statutes, or, to choose another illustration, the language of the statute involved in *U. S. v. Petrillo*, 332 U. S. 1. In that case this Court

1. Construed the statute so as to be constitutional rather than unconstitutional;
2. Refused to consider the constitutionality of the statute as applied to a set of circumstances not before the Court;
3. Decided that even though the statute might be unconstitutional as applied to one set of circumstances, it would, nevertheless, be constitutional as applied to other circumstances;

4. Decided that the language of the statute was not so indefinite as to be void for uncertainty.

That case involved a statute making it unlawful "by the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain a licensee—

1. To employ or agree to employ in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services;"

The statute did not mention picketing, peaceful or violent.

It was contended that the statute abridged freedom of speech by making peaceful picketing a crime. In fact, the information charged that Petrillo violated the act "by placing and causing to be placed a person as a picket in front of the place of business of said licensee."

The District Court dismissed the information on the ground that "the *application* of the statute here sought to be made violated the First Amendment by its restriction upon freedom of speech by peaceful picketing." (Emphasis supplied.)

This Court pointed out that the objection raised by respondent was not to the *application* of the statute but to the whole statute itself, saying:

> "Yet the respondent's motion to dismiss was made only on the ground that the statute, as written, contravenes the First Amendment." (P. 9.)

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This Court further pointed out that the trial court rendered its decision on the *application* of the statute.

> "Thus, rather than holding the statute as written to be an unconstitutional violation of the First Amendment, the District Court ruled on the statute as it was proposed to be applied by the information as it then read."

This Court further said:

> "We consider it inappropriate to reach the merits of this constitutional question now. As we have pointed out, we have consistently said that we would refrain from passing on the constitutionality of statutes in advances of the necessity to do so.
>
> * * * * * * * *
>
> "We therefore have a situation in which we are urged to strike down a statute as violative of the constitutional guarantees of free speech when the statute has not been, and might never be, applied in such manner as to raise the question respondent asks us to decide.
>
> * * * * * * * *
>
> "Thus this case had not reached a stage where the decision of a precise constitutional issue was a necessity. Consequently, we refrain from considering any constitutional questions except those concerning the Act as written. We do not decide whether the allegations of the information, whatever shape they might eventually take, would constitute an *application* of the statute in such manner as to contravene the First Amendment. We only pass on the statute on its face; it is not in conflict with the First Amendment." (Emphasis supplied.)

In every respect the decision of the California Court on the constitutionality of the statute in question under the Constitution of the United States is at variance with the decisions of this Court.

It declared the state statute unconstitutional under the right of free speech. In order to do so:

> "It permitted the prior censorship of matters undeniably protected by the constitutional guarantee of free speech."

First: It construed the statute so as to be invalid rather than so as to be constitutional.

Second: It so decided, not upon the facts before it, but upon imaginary cases not before the Court.

Third: It failed to follow the directions of the separability clause by striking out offending language so as to render the statute constitutional.

Fourth: It failed to give effect to the separability clause which provided that if the statute were invalid as applied to certain persons or circumstances it should nevertheless be valid as to other persons or circumstances.

Fifth: It held void for uncertainty language no less certain than that upheld in the decisions of this Court above referred to.

Sections 1131 to 1136 of the Labor Code of California are plain, certain and readily understood and represent nothing more than the right of the state to protect against abuses of the right of free speech.

We earnestly contend that the state had the right to enact this law and to denounce thereunder as unlawful

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certain combinations and agreements which in effect were combinations in restraint of trade. The acts constituted more than just the exercise of free speech under the First Amendment; the acts complained of went far beyond the publicizing of the existence of a labor dispute.

Let us examine the opinion of the Trial Court who made findings which are undisputed in this matter, where the Court said [R. 171-173]:

> "Before discussing that act, however, let us examine the order of the Court and the proven acts of defendants herein, for these are controlling factors, rather than any theories assumed to be applicable thereto. In this connection it must be borne in mind that peaceful picketing must be for a lawful purpose and by lawful means in order to claim such constitutional protection. (James v. Marinship Corp., 25 Cal. (2d) 721.)
>
> "By the terms of the order defendants are 'restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts: combining or agreeing to cease performing or to cause any employee of (certain named carriers, suppliers and customers of plaintiff) or any other customer, supplier or carrier of plaintiff to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers or any of them, for the purpose of inducing or compelling such employers or any of them to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business—or carrying, shipping, or receiving from or delivering to plaintiff any freight or merchandise for plaintiff; or (b) in any way carrying out or effectuating any

such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement; (c) provided however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.'

"Now let us consider some of the acts of defendants in the light of this order. Defendants, in combination with each other, and with other persons, caused plaintiff's trucks to be followed to the dock or wharf of the Indies Terminal Co. at the harbor, where a certain shipment of coffee belonging to plaintiff awaited delivery to plaintiff; upon arrival at the dock the person following the truck hurriedly telephoned to defendant Lillefloren; the latter appeared within a few minutes with other men who immediately put on the arm bands of pickets and paraded in front of the door from which the coffee was about to be taken; defendant Lillefloren then notified the superintendent of the Indies Terminal Co. not to deliver said coffee to plaintiff and notified the employees of Indies Terminal Co. not to check out or deliver said coffee to plaintiff; the checker thereupon telephoned to someone for instructions and as a result refused to continue the work of checking; at plaintiff's request the superintendent thereupon indicated his willingness to allow plaintiff's representatives to themselves load the coffee upon its truck, giving their receipt therefor; thereupon defendant Lillefloren threatened that if this were done he would throw a picket line around the entire wharf and keep the picket line in effect 24 hours per day. The superintendent then advised defendant Lillefloren that this coffee belonged to plaintiff, that he had no

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legal right to prevent plaintiff from taking it and that he would be violating his duty if he did so; nevertheless defendant renewed his threat; the superintendent thereupon stated that they had other ships arriving at the wharf, one due within 24 hours, and that he could not risk having their entire business tied up, and for that reason refused to allow plaintiff to take the coffee. Plaintiff's representatives then left with their truck and defendant Lillefloren and his pickets also left. The wharf of the Indies Terminal Co. is 1000 feet long and does a general business of receiving and shipping cargoes in intrastate, interstate and foreign commerce.

"Defendants contend that the eventual purpose of their action was to bring about the unionization of plaintiff's employees—a lawful purpose. But does this make all intermediate purposes lawful? The very cases upon which defendants rely hold to the contrary.

"The immediate purpose of the above actions of defendants was to prevent plaintiffs from obtaining certain specific bags of coffee to which they were legally entitled; and the immediate and sole purpose of the threat to picket and tie up the entire dock of Indies Terminal Co. to refuse to allow plaintiff to take its own coffee to which it was legally and immediately entitled—an unlawful act. Not only was the threat made for that purpose but it succeeded. That it did succeed and that the action of the Indies Terminal Co. in refusing to allow plaintiff to take its own coffee was unlawful is demonstrated by the fact that a few days later by an independent action in this court (the file of which was introduced in evidence herein) the plaintiff received an order of this court for such delivery and pursuant thereto received delivery when accompanied by 12 armed Deputy Sheriffs.

"A similar occurrence took place at the dock of the General Steamship Co. where defendants Lillefloren and Sylvane appeared with their same roving pickets who took their arm bands from their pockets and proceeded to picket so long as plaintiff's representatives were there, prepared to get their coffee and left when the latter left.

"Can anyone say that this was peaceful and lawful picketing? Can it really be said that the above actions, including the successful threat of picketing for the purpose of compelling a neutral to do an unlawful act, were the exercise in good faith of free speech, for the purpose of advising the public of the existence of a labor dispute? Finally, can the picketing or threat of picketing of an entire dock 1000 feet long, where the ships of all nations come and go, thus injuring not only the dock company but large numbers of shippers and consumers having no connection whatever with the dispute, possibly be justified upon the theory of the interdependence of economic interest of all engaged in the same industry?

"That the defendants have a right to engage in peaceful picketing under proper circumstances and for a lawful purpose is so thoroughly established that the citation of authorities would be superfluous.

"But the existence of a right is one thing—its abuse is quite another. The Supreme Court of the United States has said that every case must be determined upon its own circumstances; Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, at 430; Thomas v. Collins, 323 U. S. 516; Schenck v. U. S., 249 U. S. 47, 52; and the great number of cases that have gone to the Supreme Court of the United States as well as to the highest courts of the various states is ample proof of that truism."

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The statute involved here was enacted to reach just such conduct and surely the state had a right to impose limits on the concerted actions of labor unions, its members and agents, and this Act represented the policy of the people of the State of California in such matters, as indicated by the enactment of the law by the legislature in the first instance, and its subsequent ratification in referendum by the people of the State of California. (*In re Blaney,* 30 Advance California Reports 648-666.)

This Act resulted from numerous statements by the Supreme Court of the State of California to the effect that "with reference to the power that is placed in the hands of a few persons by combinations and organizations on either side, that these are considerations for the law-making power not for the courts." (*C. S. Smith Metropolitan Market Co. v. Lyons,* 16 Cal. 2d 389, 400; *McKay v. Retail Automobile Salesmen's Local Union 1067,* 16 Cal. 2d 311, 331.)

It is the unlawful agreement and conspiracy and concerted action that is denounced by this law and the facts recited in the complaint show that the demands made by the union were unlawful; they did not represent a majority of the workers for collective bargaining purposes, and any contract that had been entered into would have been void *ab initio.* The court of equity had nothing to do but to issue an injunction, for the unlawful agreement had as its objective an unlawful purpose. (National Labor Relations Act (29 U. S. C. A. 151 *et seq.*); see *Park & Tilford Import Co. v. International, etc., of Teamsters,* 27 Cal. 2d 599.)

Unlawful demands were made upon common carriers to refuse to perform in accordance with the law and their bounden duty as common carriers. Such a demand was

unlawful. (See California Civil Code, Secs. 2169, 2170; Interstate Commerce Act, Sec. 1(4), 49 U. S. C. A. 1(4); Cal. Const., Art. XII, Sec. 21; Public Utility Act, Sec. 19; Deering, Act 6386, Sec. 19.)

Under the Sherman Law and Clayton Act, prior to the implied amendment thereof in 1932 by the Norris-La-Guardia Act (47 Stat. 70, 29 U. S. C. 101) as interpreted in *United States v. Hutcheson,* 312 U. S. 219, the Supreme Court held that "boycotts through combinations restraining interstate commerce were unlawful acts and subject to civil action as well as being a crime." This was true whether or not the boycott was carried on solely by peaceful persuasions, it was true whether or not the boycott was organized solely by unions and their members. (See *Duplex Printing Co. v. Deering,* 254 U. S. 443, 466, 468, 474, 478; *Bedford Company v. Stone Cutters Assn.,* 274 U. S. 37, 50, 55; *Lawlor v. Loewe,* 235 U. S. 522.)

Even today a boycott carried on by a combination of unions and members violates the Sherman Act. (*Allen Bradley Co. v. Local Union No. 3,* 325 U. S. 797.)

The fact that the Supreme Court thus construed and applied the Sherman Act, the repeated decisions over many years as a statute prohibiting secondary boycotts by labor unions, leaves no room for the claim, we submit that a statute so providing is unconstitutional. Even the judges who dissent from the Court's decisions in the cases cited above were careful to say that the matter was strictly one of statutory construction and not of constitutional right. (See *Duplex Printing Co. v. Deering,* 254 U. S. 443, 488.)

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To the same effect is *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 488:

> "Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of statutory constructions, not constitutional power."

See:

> *National Labor Board v. Jones & Laughlin*, 301 U. S. 1, 39-40.

Even as far back as 1908, in *Parkinson Co. v. Bldg. Trades Council*, 154 Cal. 581, the Court upheld the right of labor to conduct a secondary boycott, there being no statute prohibiting it. In the opinion of the Court by Chief Justice Beatty it was said, page 599:

> "Whatever others may think of the policy or justice of such a rule, that is a matter outside the province of the courts, and as with regard to other questions of economic or political aspect, the remedy, if a remedy is needed, must be found by the legislature."

Recent cases in California have not deviated from that rule, or modified those statements—that relief was to be had from the legislature, whose duty it was to protect the public welfare. (See *McKay v. Retail Auto S. L. Union No. 1067*, 16 Cal. 2d 311, 331. See also, *C. S. Smith Met. Market Co. v. Lyons*, 16 Cal. 2d 389, 400.)

The facts recited in the complaint in question were sufficient to bring the present case within the many cases which hold that combinations for unlawful purposes and activities in support thereof, even including peaceful picketing, may be or become actionable or enjoinable and even

in the absence of a statute such action infringes no constitutional action of any kind. (See *James v. Marinship Corp.* (1944), 25 Cal. 2d 721, 728; *Bautista v. Jones* (1945), 25 Cal. 2d 746, 748, 752; *Carpenters & Joiners Union v. Ritter's Cafe* (1942), 315 U. S. 722, 725, 728.)

This is a case where a plain pattern is laid down by the cases dealing with the subject in hand. The cases established that the legislature may make unlawful—as here it has done—concerted action to effect a secondary boycott. The cases hold, without any dissent, that combinations for an unlawful purpose and picketing in support thereof can be prohibited. Admittedly, the public can by statute put some limitation on the scope of labor disputes and can localize them to some extent. In other words, the legislature has the right to define the limits within which the combatants in a labor dispute may conduct their warfare. (See *Carpenters & Joiners Union v. Ritter's Cafe,* 315 U. S. 722, 728. See also *Bakery & Pastry Drivers etc. v. Wohl,* 315 U. S. 769, 775.) "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual."

Mr. Justice Shenk, in the dissenting opinion, in the case of *In re Blaney,* 30 A. C. 648, 666, said:

> "This court has repeatedly said, in accord with prevailing judicial opinion elsewhere, that conflicts in labor-management relations can best be controlled, not by the courts but by the Legislature. (Citing cases.)
>
> "Since those decisions were rendered the Legislature has acted, not once but twice in declaring the 'hot

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cargo' and 'secondary boycott' unlawful labor practices and has provided redress by civil action.

"The first act was passed in 1941 (Stats. 1941, p. 2079). The referendum was invoked against it and the effective date of the Act was postponed until its approval by the electors of the state at the general election in November, 1942. During the campaign for and against it the terms of the enactment were extensively discussed, and its meaning and effect were thoroughly understood. That Act contained a provision limiting its effective duration until May 1, 1943, and thereafter during the period of war between the United States and any foreign power.

"The last session of the legislature (Stats. 1947, p. 844, ch. 278) eliminated the emergency provision but without changing the law as enacted in 1941. This was done after extensive discussion and hearings during the legislative session. Now, after the Legislature has twice so acted and the electors of the state have approved the law, this court proceeds to strike it down for reasons which I deem insufficient and not compelled by any constitutional provision or by any decision of the Supreme Court of the United States."

The respondents in this case knew full well what they were doing. They thoroughly understood what they were restrained from doing and the conduct of one of the respondents, at the time of the service of the injunction on him, demonstrated his knowledge of the proceeding, the law, and his utter contempt for the courts, as Mr. Judge Stephens said [R. 174].

In closing on this point, we cannot urge too strenuously that the enactment of this law abridges no right of free

speech, nor does it do violence to due process as guaranteed by the Fourteenth Amendment to the Constitution.

Our every act in daily life is regulated, as properly it should be, for government cannot exist if the citizen may at will use his property to the detriment of his fellows or exercise his freedom contract to work them harm, or to so use his rights of free speech and other liberties guaranteed under the First Amendment as to disrupt the tranquility of the community within which he lives.[1]

---

[1]*Nebbia v. New York*, 291 U. S. 502. This case discussed at great length the guarantee of due process and held that it demands only that the law shall not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the objects sought to be obtained. It further held in effect that in so far as the due process requirement is concerned a state is free to adopt and enforce whatever economic policy may reasonably be deemed to promote public welfare, whether by promoting free competition, by laws armed against monopolies, or by groups charged with fixing minimum prices. Where a law is not arbitrary or discriminatory the Courts cannot deal with the wisdom of the legislative policy or with the adequacy or practicability of the law enacted to forward it. The constitution does not secure the liberty to conduct a business so as to injure the public at large, or any substantial group. As the Court said (p. 524):

"And Chief Justice Taney said upon the same subject:

'But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the Constitution of the United States.'

Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. * * *"

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## II.

**The Denial by the Supreme Court of California to the Petitioner, Farmer Bros. Co., the Real Party in Interest, of Relief Under the Facts Set Forth in the Complaint Deprived the Petitioner in Interest of the Equal Protection of the Law and Due Process of Law, in Violation of the Fourteenth Amendment to the Constitution.**

Under the facts recited in this case, Farmer Bros. Co., being in interstate commerce, under the National Labor Act as it then existed, could not deal with a union which did not represent a majority of its members for collective bargaining purposes. (29 U. S. C. A. 151 *et seq.; Park & Tilford Import Corp. v. International, etc., of Teamsters,* 27 Cal. 2d 599.)

There can be no doubt but that the demands were for an unlawful purpose. There is no room in this case for the reviewing court (Supreme Court of California) to disregard the cold findings of fact by the trial court and assume that the purposes for which the union conducted its concerted activities was different than that which the evience shows it conclusively to have been.

The hard realities in this case show that this concern employed more than 250 employees and the union had been trying to organize them; that the concern was in interstate commerce; also, the union was unsuccessful. They then made demands that the employer sign a "closed shop contract." [See Pars. XXI, XXII, XXIII, Complaint, R. 14-18.]

The complaint recites facts which demonstrate an unlawful interference with common carriers, and the decision in this case runs counter with the decision filed the same day by the Supreme Court of California in the case of *N. W. Pac. R. R. Co. v. Lumber & S. W. Union,* 31 Advance California Reports, p. 448, where the Court sustained an injunction interfering with a common carrier in the discharge of its bounden duty. To grant relief to the railroad in one breath and to deny it to Farmer Bros. Co. in the next is a plain denial of equal protection of the law. (*Yick Wo v. Hopkins,* 118 U. S. 220.)

Plainly the acts of the union were unlawful in that the demands in the first instance were unlawful—the demand of a "closed shop contract" where they did not represent the majority of the workers. Next, they proceeded with the interference with common carriers in the discharge of a duty which, under the law, they were required to perform.

In these contempt proceedings, Lillefloren and the other agents interfered with the delivery of green coffee by a common carrier. It was a plain effort to put Farmer Bros. Co. out of business if they failed to accede to the unlawful demands of the respondents.

Manifestly, to permit this decision to stand makes the California courts impotent to grant relief. It deprives even a court of equity of the right to restrain unlawful activities.

## Conclusion.

Wherefore, the decision below should be reversed and the so-called "hot cargo and secondary boycott law" of California should be held constitutional.

Respectfully submitted,

RUSSELL E. PARSONS,
*Attorney for Petitioner, Farmer Bros. Co., a Corporation, the real party in interest.*

HAROLD W. KENNEDY,
*County Counsel;*

WILLIAM E. LAMOREAUX,
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*Attorneys for Petitioner,*
*The Superior Court.*

## SUBJECT INDEX

PAGE

Argument ..... 4

Authorities ..... 5

## TABLE OF AUTHORITIES CITED

### CASES


| | PAGE |
|---|---|
| Blaney, In re, 30 A. C. 648 | 3 |
| Bridges v. California, 314 U. S. 252 | 7 |
| Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 55 L. Ed. 797 | 8 |
| Penfield Co. v. Securities & Exchange Com., 330 U. S. 585 | 5 |
| United States v. United Mine Workers of America, 330 U. S. 258 | 6 |


### STATUTES


| | |
|---|---|
| Labor Management Relations Act of 1947, Sec. 303 (Pub. Law 101, 80th Cong., 1st Sess., Taft-Hartley Act) | 7 |
| United States Constitution, First Amendment | 4, 5 |
| United States Constitution, Fourteenth Amendment | 4, 5 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., a corporation, the real party in interest,

*Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## ANSWER TO MOTION TO DISMISS WRIT OF CERTIORARI.

*To the Honorable Fred Vinson, Chief Justice of the Supreme Court of the United States and to the Honorable Associate Justices:*

Come now the petitioners, The Superior Court of the State of California in and for the County of Los Angeles, and Farmer Bros. Co., a corporation, the real party in interest, petitioners, and for Answer to the Motion to Dismiss the Writ of Certiorari filed herein by the respondents, respectfully set forth:-

I.

The respondents were convicted of contempt of Court after trial and sentenced to jail and to pay fines. Their conduct was a serious and contemptuous affront to the Court and the orderly process thereof. The people of the State of California are interested and through the Superior Court of the State of California in and for the County of Los Angeles sought to enforce the Order of its Court and to punish for a disobedience of its order. The Supreme Court of the State of California did not deny the authority of the Superior Court to enforce the punishment imposed by that Court if the statute involved be held valid. Its determination turned upon the unconstitutionality of the statute involved under the First and Fourteenth Amendments, hence this issue is now squarely before this Court. No issue was raised in the Courts below, nor was that issue passed upon—as to the dismissal by Farmer Bros. Co.—*nor was it raised in opposition to the Petition for Certiorari* (emphasis ours); hence it is not properly before this Court, nor the reasons therefor—the respondents did not seek to amplify the record—we brought to this Court the complete record before the Supreme Court of California. The sole issues are the constitutionality or unconstitutionality of the California statute forbidding combinations to bring about the secondary boycott or the so-called hot cargo. The Taft-Hartley Law upholds the secondary boycott and must necessarily govern the construction of State statutes containing in effect similar provisions—secondly the injunction surely was good because

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it forbade combinations and agreements to compel an unlawful act.

II.

The case is not now moot regardless of the filing by Farmer Bros. Co. of a dismissal of the Complaint in the Superior Court of the State of California in and for the County of Los Angeles. At the time of the trial the injunction was in force—it has never been dissolved by motion or order of Court. The dual function of contempt has long been recognized: (1) vindication of the public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires of him. Both the Superior Court and Farmer Bros. Co. in this proceeding seek obedience to Orders of the Court.

III.

The injunction granted was never dissolved and due process does require under the circumstances of this case that the judgment of the California Supreme Court reversing the convictions of respondents upon the authority of *In re Blaney*, 30 A. C. 648, and upon constitutional grounds, be reviewed by this Court and considered upon the merits.

## ARGUMENT.

The record filed with this Court on the Petition for Writ of Certiorari was complete and included the entire record before the Supreme Court of the State of California. It is significant that when the Petition for Certiorari was filed no effort was made by the respondents herein in any respect to augment the record, and while it is true that we accommodated counsel by stipulating as to the fact that the action had been dismissed, we do not feel that that is properly a part of the record before this Court injected at this late date, neither would the reasons therefor be material.

The contempt proceeding was a separate, distinct proceeding brought about by the filing of affidavits and a complaint seeking to have the respondents adjudged in contempt. A citation was issued by the Court and thereafter demurrers were filed by the Respondents asserting that they were being deprived of constitutional rights guaranteed to them under both the First and Fourteenth Amendments to the Constitution. [R. 107, 118.] The demurrers were overruled, issues were joined and a trial ensued. The record shows that the respondents even failed to take the stand and deny the accusations or to explain them in the slightest degree. The opinion of Judge Stephens who tried the case, establishes beyond doubt the utter contempt held by these respondents for the Court and its Orders. [R. 169.]

The injunction issued has never been dissolved either by motion or by order of Court and under the long-recognized rule with reference to the function of contempt, it has been repeatedly said that the purposes thereof are (1) vindication of the public interest by punishment of the con-

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temptuous conduct, (2) coercion to compel the contemnor to do what the law requires of him. The respondents sought to reverse the conviction of contempt with resulting penalties of both fine and imprisonment by contesting the constitutionality of the law, urging it was in violation of both the First and Fourteenth Amendments. A substantial federal question is squarely before this Court. Both the courts and litigants have a right to expect that orders of Court will be obeyed and an order issued by a Court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceeding, even though the statute under which the order is issued is unconstitutional.

Violations of a Court order are punishable as contempt even though the order is set aside on appeal as in excess of the Court's jurisdiction, or even though the basic question has become moot.

## Authorities.

*Penfield Co. v. Securities & Exchange Com.*, 330 U. S. 585, 592, where it was said:

> "The dual function of contempt has long been recognized (1) vindication of the public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires of him. *Gompers v. Bucks Stove & Range Co., supra* (221 U. S. pp. 441 *et seq.*, 55 L. Ed. 805, 31 S. Ct. 492, 34 LRANS 874); *United States v. United Mine Workers, supra*, 330 U. S. p. 302, *ante*, 917, 67 S. Ct. 677. As stated in *Bessette v. W. B. Conkey Co.*, 194 U. S. 324, 327, 48 L. Ed. 997, 1001, 24 S. Ct. 665, The purpose of contempt proceedings is to uphold the power of the court and also to secure to suitors therein the rights by it awarded."

In the case of *United States v. United Mine Workers of America,* 330 U. S. 258, 293, the Court held:

"In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

"Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

"Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat v. Kansas,* 258 U. S. 181, 189, 190, 86 L. Ed. 550, 559, 42 S. Ct. 277 (1922) this Court said:

"'An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity

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of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

"Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden v. Searls,* 121 U. S. 14, 30 L. Ed. 853, 7 S. Ct. 814 (1887), or though the basic action has become moot, *Gompers v. Bucks Stove & Range Co.,* 221 U. S. 418, 55 L. Ed. 797, 31 S. Ct. 492, 34 LRA (NS) 874 (1911).

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the Court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt."

With reference to the propriety of review of State contempt proceedings by this Court, see *Bridges v. California,* 314 U. S. 252.

The *Labor Management Relations Act of 1947*—Public Law 101, 80th Congress, First Session—Taft-Hartley Act, condemns the secondary boycott and represents the federal policy as to the regulation and restriction of such secondary boycott (see Section 303 of such Act).

We think the authorities above cited completely answer the Motion to Dismiss heretofore filed by the respondents as to whether or not a substantial federal question was

raised, and as to whether or not contempt may proceed even though the basic action has become moot.

*Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 55 L. Ed. 797.

We therefore respectfully pray that this Court deny the Motion to Dismiss and proceed to determine this all-important question of the constitutionality of the State statute involving the secondary boycott and hot cargo upon the merits.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

October Term 1948

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., a corporation, the real party in interest,

*Petitioners,*

*vs.*

GAY LILLEYBLOOM, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## PETITIONERS' REPLY BRIEF.

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## SUBJECT INDEX


PAGE

I.

Petitioners' reply to respondents' statement ..... 1

II.

Argument ..... 4

III.

Conclusion ..... 19

## TABLE OF AUTHORITIES CITED

### CASES.


| | PAGE |
|---|---|
| Blaney, In re, 30 A. C. 648, 184 P. 2d 892 | 9, 10, 16 |
| C. S. Smith Met. Mkt. Co., Ltd. v. Lyons, 16 Cal. 2d 389 | 16 |
| Electric Bond & Share Co. v. Sec. & Exchange Com., 303 U. S. 418 | 18 |
| Gompers v. Buck's Stove & Range Co., 221 U. S. 419, 55 L. Ed. 797 | 9 |
| McKay v. Retail Automobile Salesmen's Local Union No. 1067, 16 Cal. 2d 311 | 16 |
| Penfield Co. v. Sec. & Exchange Comm., 330 U. S. 585 | 9 |
| People v. Dail, 22 Cal. 2d 642 | 14 |
| Porterfield, In re, 28 Cal. 2d 91 | 14 |
| Printing Specialties and Paper Converters Union, Local 388, A. F. L., and W. J. Turner v. H. F. LeBaron, Regional Director of the 21st Region of the N. L. R. B., U. S. Ct. of Appls, 9th Cir.., Dec. 13, 1948, Case No. 11894 | 14, 15 |
| United States v. Petrillo, 332 U. S. 1 | 18 |
| United States v. United Mine Workers of America, 330 U. S. 198 | 9 |
| Washer, In re, 200 Cal. 609 | 9 |


### STATUTES


| | |
|---|---|
| California Constitution, Art. XI, Sec. 7½ | 19 |
| Government Code, Sec. 26524 | 19 |
| Government Code, Sec. 26529 | 19 |
| Government Code, Sec. 27640 | 19 |
| Government Code, Sec. 27641 | 19 |
| Government Code, Sec. 27642 | 19 |
| Government Code, Sec. 27643 | 19 |
| Government Code, Sec. 27644 | 19 |
| Los Angeles County Charter, Art. IV, Sec. 14 | 19 |
| Los Angeles County Charter, Art. XI, Sec. 20 | 19 |
| United States Constitution, First Amendment | 4 |
| United States Constitution, Fourteenth Amendments | 4 |


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*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## PETITIONERS' REPLY BRIEF.

### I.

### Petitioners' Reply to Respondents' Statement.

1. Respondents in effect state that we did not fully apprise the Supreme Court of the United States of the facts in this case. We say that we brought to the Supreme Court the full record before the Supreme Court of the State of California, and had these Respondents at any time desired to call the attention of the Supreme Court to the fact that they had procured a dismissal of the action, they could have done so by appropriate proceedings before the Supreme Court of the State of California and before this record had been prepared, so that we, the Petitioners, might fully have replied thereto. But this

they did not seek to do. Respondents even say "Unbeknown to Respondents or to the California Supreme Court, Petitioner on October 9, 1947, dismissed the Complaint herein with prejudice." We do not understand why respondents go *de hors* the record, for the facts are some of counsel upon the briefs for respondents actually procured the dismissal. As we asserted in our Answer to Motion to Dismiss Writ of Certiorari the record filed in this Court on the Writ for Certiorari was complete and included the entire record for the Supreme Court of California. Again we call your attention to the fact that when the Petition for Writ of Certiorari was filed, no effort was then made by the respondents herein in any respect to augment the record or to assert the propositions they now call to the attention of the Court in connection with the dismissal. Merely by way of accommodating counsel, and, to be frank with the Court, we stipulated to the fact of the dismissal; but we again assert that this is not properly a part of the record before this Court and that it was injected by the respondents at this late date for the purpose of avoiding a ruling by this Court upon the merits as to the constitutionality of the statute involved, namely, the "hot cargo and secondary boycott law" of California. The Supreme Court of California did not deny the authority of the Superior Court to enforce the punishment imposed by that Court if the statute involved be held valid. Its determination turned upon the unconstitutionality of the statute involved under the First and Fourteenth Amendments. Hence,

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this issue is now squarely before this Court. No issue was raised in the Courts below, nor was that issue passed upon, as to the dismissal by Farmer Bros. Co., nor was it raised in opposition to the Petition for Certiorari; hence, it is not properly before this Court, nor the reasons therefor—which we might adequately supply if the opportunity had been given, but we cannot now *de hors* the record, neither can respondents. We brought to this Court the complete record before the Supreme Court of California. The sole issue is the constitutionality or unconstitutionality of the California statute forbidding combinations to bring about the secondary boycott or the so-called hot cargo. It was these respondents who challenged the constitutionality of this law now in question, first, in their Demurrers to the Complaint originally filed, and then again when they were brought before the Court pursuant to a citation for contempt. They raised the issue again in the trial of the contempt proceeding and elected to stand alone upon that proposition—that was, that the law was unconstitutional. Now they seek to avoid a decision by this Court with the bald statement that petitioners failed to raise the constitutionality. We met this issue and contested it upon every occasion that it was raised by the respondents. [See Demurrer, R. p. 57; see Demurrer Clarence C. Todd and John C. Stevenson now appearing on the *Amicus* Brief for the California State Federation of Labor, p. 69; p. 107 Demurrer of Respondent Sylvane to Petition re Contempt.]

## II.

## Argument.

1. Respondents contend that Farmer Bros. Co. dismissed its Complaint "unbeknown to respondents." This is beyond the record and is typical of those kind of statements, for it does not comport with the facts. Some of counsel upon the Brief for Respondents procured the dismissal. It would be *de hors* the record to recite the reasons therefor and we think it has no appropriate place in these proceedings. The Temporary Restraining Order has never been dissolved by order of Court and these respondents have never sought to bring this about either in the trial Court or before the Supreme Court of the State of California. The Supreme Court of California did not deny the authority of the Superior Court to enforce the punishment imposed by that Court if the statute involved be held valid. Its determination of the issues turned upon the unconstitutionality of the statute involved under the First and Fourteenth Amendments, which issues were raised by these respondents as hereinbefore indicated, hence, the issue is now squarely before this Court, the challenge of constitutionality of the law of the statute in question having been accepted by these petitioners and it was fully debated before the trial Court and the Supreme Court of California. May we respectfully direct your attention to the Opinion of Judge Stephens who tried the contempt matter upon the merits. [R. 170-174.]

> "Extensive briefs and oral arguments were presented by both sides upon the assumption that this proceeding necessarily involves the so-called Hot Cargo Act (Secs. 1131-1136 of the Labor Code)."

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"Before discussing that Act, however, let us examine the Order of the Court and the proven acts of defendants herein, for these are the controlling factors, rather than any theories assumed to be applicable thereto. In this connection it must be borne in mind that peaceful picketing must be for a lawful purpose and by lawful means in order to claim such constitutional protection. (James v. Marinship Corp., 25 Cal. 2d 721.)"

"By the terms of the order defendants are 'restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts: combining or agreeing to cease performing or to cause any employee of (certain named carriers, suppliers and customers of plaintiff) or any other customer, supplier or carrier of plaintiff to cease performing any services for said employees, (*sic*) or any of them, or causing or agreeing to cause any loss or injury to such employers or any of them, for the purpose of inducing or compelling such employers or any of them to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business—or carrying, shipping, or receiving from or delivering to plaintiff any freight or merchandise for plaintiff; or (b) in any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement; (c) provided however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined.'

"Now let us consider some of the acts of defendant in the light of this order. Defendants, in combination with each other, and with other persons, caused plaintiff's trucks to be followed to the dock or wharf of the Indies Terminal Co. at the harbor, where a certain shipment of coffee belonging to plaintiff awaited delivery to plaintiff; upon arrival at the dock the person following the truck hurriedly telephoned to defendant Lillefloren; the latter appeared within a few minutes with other men who immediately put on the arm bands of pickets and paraded in front of the door from which the coffee was about to be taken; defendant Lillefloren then notified the superintendent of the Indies Terminal Co. not to deliver said coffee to plaintiff and notified the employees of Indies Terminal Co. not to check out or deliver said coffee to plaintiffs; the checker thereupon telephoned to someone for instructions and as a result refused to continue the work of checking; at plaintiff's request the superintendent thereupon indicated his willingness to allow plaintiff's representatives to themselves load the coffee upon its truck, giving their receipt therefor; thereupon defendant Lillefloren threatened that if this were done he would throw a picket line around the entire wharf and keep the picket line in effect 24 hours per day. The superintendent then advised defendant Lillefloren that this coffee belonged to plaintiff, that he had not legal right to prevent plaintiff from taking it and that he would be violating his duty if he did so; nevertheless defendant renewed his threat; the superintendent thereupon stated that they had other ships arriving at the wharf, one due within 24 hours, and that he could not risk having their entire business tied up, and for that reason refused to allow plaintiff to take the coffee. Plaintiff's representatives then left with their truck and

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defendant Lillefloren and his pickets also left. The wharf of the Indies Terminal Co. is 1000 feet long and does a general business of receiving and shipping cargoes in intrastate, interstate and foreign commerce.

"Defendants contend that the eventual purpose of their action was to bring about the unionization of plaintiff's employees—a lawful purpose. But does this make all intermediate purposes lawful? The very cases upon which defendants rely hold to the contrary.

"The immediate purpose of the above actions of defendants was to prevent plaintiffs from obtaining certain specific bags of coffee to which they were legally entitled; and the immediate and sole purpose of the threat to picket and tie up the entire dock of Indies Terminal Co. was to compel the superintendent of Indies Terminal Co. to refuse to allow plaintiff to take its own coffee to which it was legally and immediately entitled—an unlawful act. Not only was the threat made for that purpose but it succeeded. That it did succeed and that the action of the Indies Terminal Co. in refusing to allow plaintiff to take its own coffee was unlawful is demonstrated by the fact that a few days later by an independent action in this court (the file of which was introduced in evidence herein) plaintiff received an order of this court for such delivery and pursuant thereto received delivery when accompanied by 12 armed Deputy Sheriffs.

"A similar occurrence took place at the dock of the General Steamship Co. where defendants Lillefloren and Sylvane appeared with their same roving pickets who took their arm bands from their pockets and proceeded to picket so long as plaintiff's representatives were there, prepared to get their coffee and left when the latter left.

"Can anyone say that this was peaceful and lawful picketing? Can it really be said that the above actions, including the successful threat of picketing for the purpose of compelling a neutral to do an unlawful act, were the exercise in good faith of free speech for the purpose of advising the public of the existence of a labor dispute? Finally, can the picketing or threat of picketing of an entire dock 1000 feet long, where the ships of all nations come and go, thus injuring not only the dock company but large numbers of shippers and consumers having no connection whatever with the dispute, possibly be justified upon the theory of the interdependence of economic interest of all engaged in the same industry?

"However, the industry of counsel in presenting arguments and quoting authorities which they in good faith believe sufficient to sustain their respective positions, with relation to the so-called Hot Cargo Act requires some discussion of that subject.

"If the provisions of the Act are valid and constitutional, it forms a sufficient basis for the order of the Court which, as I have already indicated, the defendant violated.

"It is contended by defendants that that Act is violative of the free speech provisions of both the federal and state constitutions, in so far as it prohibits the secondary boycott and secondary picketing. The right of labor to engage in both of these activities, prior to the enactment of the Act in question, is thoroughly established in this state by decisions of the Supreme Court and District Courts of Appeal. Pierce v. Stablemen's Union, 156 Cal. 70; McKay v. Retail Auto etc. Union, 16 Cal. (2d) 311, and cases there cited."

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Therefore, it can be plainly seen that the respondents raised the question and having prevailed in the Supreme Court of California now seek to avoid a hearing upon the merits. The matter is neither moot nor is this Court justified in dismissing this proceeding, and even if it were moot, this Court under the authorities, would have a right to pass upon the constitutionality of the statute involved. See *Penfield Co. v. Sec. & Exchange Com.*, 330 U. S. 585, 592; *U. S. v. United Mine Workers of America*, 330 U. S. 198, 293. More especially so where the interests of the public are involved and where there should be an adjudication on the merits as to the constitutionality of the statute involved.[1]

The cases relied upon by respondents are certainly not in point, in fact, they cite an old case where the fine was payable to the complainant. That is not the situation here. These respondents were ordered to pay fines to the People of the State of California and to serve time in jail. The case relied upon by the respondents, *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 419, 55 L. Ed. 797, itself says:

> "When the main case was settled, every proceeding which was dependent on it, or a part of it, was also

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[1]May we direct your attention to the fact that *In re Blaney*, 30 A. C. 648, 184 P. 2d 892 [R. 181], which is the case relied upon by the Supreme Court of California, discussed the constitutionality of the statute involved at great length. That issue had been raised upon a Writ of Habeas Corpus and there was no available remedy by which that case could reach the Supreme Court of the United States. It is still waiting to go to trial upon the merits; in fact, under California practice there is no means by which a Petition for Rehearing may be had in case of Habeas Corpus. See *In re Washer*, 200 Cal. 609 [R. 218].

> necessarily settled,—*of course, without prejudice to the power and right of the court to punish for contempt by proper proceedings.*" (Emphasis ours.)

Of course, in this case, there were proper proceedings by independent Affidavits and Complaint charging contempt and a trial thereon resulting in conviction.

2. The Constitutionality of the California Hot Cargo Act is squarely before this Court notwithstanding the contention of the respondents that the constitutionality of such statute is not involved in this appeal.

The decision in the case at bar relied entirely upon the decision in *In re Blaney, supra.* [R. 181.]

The Supreme Court of California based its decision upon *In re Blaney, supra,* in this language:

> "The temporary restraining order follows closely the language of the Hot Cargo Act (Lab. Code, §§ 1131-1136) which was considered and found invalid in In re Blaney, 30 Cal. (2d) 643 (184 P. (2d) 892)." [R. 216]

In the *Farmer Bros. Co.* case, picketing alone is not involved, in fact, the injunction itself specifically provided:

> "Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined." [R. 55]

This law aims not at peaceful picketing but at combinations, agreements, and unlawful conspiracies. Here the activities complained of went far beyond peaceful picketing. These respondents were attempting and did prevent common carriers from carrying out their duty under the

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law. It cannot be said that in this case the respondents were attempting to publicize a labor dispute, they went far beyond that. They threatened common carriers that if they delivered merchandise to the petitioner Farmer Bros. Co., which merchandise it owned and to which it was entitled, they would tie up neutral common carriers' docks, those of the General Steamship Co. and Indies Terminal Co., and prevent the unloading of ships. This was accompanied by language and conduct of a coercive nature, as recited in the Findings of the Trial Court and in the Opinion filed therewith. The respondents never at any time took the stand and neither denied nor explained their conduct. The Court found them guilty beyond a reasonable doubt. [R. 173] [See Affidavit re Contempt, R. 97 through 107.] [2]

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[2] [R. 101-103.] The Affidavit for Contempt supported by evidence at the trial recited:

"That the defendants Homer Ford, Russell Marks and Irv Magisen, together with Gay Lillefloren, directed other members of defendant unions, the names of whom are unknown to affiant, other than John Doe Baugh, who was one thereof, to form a picket line at said dock of the General Steamship Corporation, Ltd., at and in the immediate vicinity of said coffee and in front of the tail-end gates and openings of the trucks upon which the Sheriff was about to and did load the coffee in question. That said picket lines were formed and the pickets were directed by said defendants Homer Ford, Russell Marks, Irv Magisen and Gay Lillefloren to congregate immediately in front of the openings of said trucks so closely as to interfere with the loading thereof, in the manner and as is shown in 'Exhibit X' which is attached to and made a part of this affidavit and petition. That said exhibit shows three of said pickets, with picket bands on the left arm of each picket, reading 'Picket A. F. of L.' That the defendants Homer Ford, Russell Marks and Irv Magisen then went to the superintendent of said General Steamship Corporation, Ltd.'s, dock 232 and stated to him and to the officials of said company, in this language or in substance, to wit:

'You will stop the Sheriff from taking this coffee off this dock right now, or we will picket the dock; we will call off all

ployees paid therefor by common carriers such as General Steamship Corporation, Ltd., the Indies Terminal Company, and even the longshoremen unloading the steamers at the dock, none of whom were involved in the dispute with Farmer Bros. Co.

Surely a combination, agreement or conspiracy such as was demonstrated in this case could be regulated in the public welfare by the Legislature, and this the Legislature had done by the enactment of the statute involved.

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of the checkers whom you employ, who are checking goods to other customers, and we will call off the longshoremen who are unloading the ship here at the berth for you.' That the said superintendent, Mr. Reece, stated to the said defendants, in substance or effect, as follows: (Photostat)

'I can do nothing about it. We have been served with a copy of Judge Willis' injunction and, in addition, the Sheriff is taking the goods and I cannot resist him, as he has a court process for it.'

"That thereupon the said defendants Messrs. Ford, Marks and Magisen went to all of the employees of the General Steamship Corporation, Ltd., on Berth 232, to wit, all of the checkers who were then and there actively engaged in checking other merchandise to other shippers, both on and off the dock, also to all dock men engaged in handling merchandise on the dock other than that of plaintiff Farmer Bros. Co., also to the employees of General Steamship Corporation, Ltd., who were loading and unloading other merchandise to and from the dock, and also to the longshoremen who were unloading a ship on the water side of said dock or Berth 232 of said steamship company. That the said defendants Ford, Marks and Magisen then ordered all of said checkers, all of said longshoremen, and all of said dock workers, to cease working upon said dock and to cease handling any cargo, including the cargo of the said ship, merchandise on the dock belonging to persons other than Farmer Bros. Co., and ordered said checkers to cease checking merchandise of third parties to the dock or from the dock. That all of said checkers, all of said longshoremen, and all of said dock workers were then and there employees of, working for compensation, and for said General Steamship Corporation, Ltd. That all of said longshoremen and all of said dock workers were then and there employees of, working for compensation, and for said General Steamship Corporation, Ltd.

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The Complaint charging contempt and the evidence therein showed conclusively that this was not a case involving mere picketing, but an unlawful agreement to bring about a cessation of performance of duties by em-

The respondents here hide behind the cloak of free speech and it would appear from their argument that all acts of labor unions and their members are free from restraint. This is not the case. Even one of the cases

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That all of said longshoremen, all of said checkers, and all of said dock workers, then ceased to work and did not work for a period of two and one-half hours. That said checkers, dock workers and longshoremen demanded and received compensation for said two and one-half hours work stoppage, such compensation for said period in which they refused to work at the request and demand of the respondents Ford, Marks and Magisen amounting to approximately $150.00. That on one occasion during the loading of said coffee from said dock to the trucks standing at said dock, to wit, during the loading of the said 1499 sacks of coffee, one of the pickets placed before the opening to one of the trucks bumped and jostled one of the workmen furnished to the Sheriff for the loading thereof, to wit, a workman who was about to drag five sacks of coffee on a hand truck into one of the waiting trucks. That all of the matters and things hereinbefore recited occurred in the presence of the defendants Homer Ford, Russell Marks and Irv Magisen, who were personally present on the dock in the immediate vicinity of said picket line and of said loading operations. That affiant, as president of the plaintiff, protested to said defendants Ford, Marks and Magisen respecting their conduct, threats and actions. That 'Exhibit Y' attached hereto, is a photograph made on the scene at the time, and shows a portion of the picket line at the door or tail-end of one of the Sheriff's trucks, shows the method of obstructing the loading of said coffee by the Sheriff; that the persons shown at the upper right hand center of said photograph, 'Exhibit Y,' are affiant (with straw hat) talking to and protesting to said defendants Homer Ford, Russell Marks and Irv Magisen. That 'Exhibit Z,' attached hereto, is a photograph taken at the time and place hereinabove referred to and shows some of the pickets obstructing the entrance to one of the trucks being loaded, and particularly shows one of the pickets directly in front of one of the workmen attempting to load said truck."

cited by respondents, *In re Porterfield*, 28 Cal. 2d 91, 101, says:

> "The right of free speech protected by the federal and state constitutional guaranties is not an absolute right which carries with it into business and professions total immunity from regulation in the performance of acts as to which speech is a mere incident or means of accomplishment."

See also *People v. Dail*, 22 Cal. 2d 642, 666, where the Court said:

> "Labor leaders are not endowed with rights which the ordinary citizen individually does not have"

as urged by appellants.

The Congress itself has denounced activities similar to those complained of here in an effort to narrow the area of industrial strife and thus to safeguard the national interest in the free flow of commerce.

May we respectfully direct the Court's attention to the case of *Printing Specialties and Paper Converters Union, Local 388, A. F. L., and Walter J. Turner, Appellants, v. Howard F. LeBaron, Regional Director of the 21st Region of the N. L. R. B., etc., Appellee*, decided by the United States Court of Appeals for the Ninth Circuit December 13, 1948, Case No. 11894, which case ruled upon the constitutionality of the secondary boycott provision of the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (commonly known as the Taft-Hartley Act) which, in substance or effect, is the same as the secondary boycott provisions here involved. While we recognize that this Court is not bound by such a decision, we believe it to be of considerable importance

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in this case, being an expression of a Court second only to the Supreme Court of the United States.[3]

It must be recognized that the state is not compelled to stand supinely by and to tolerate in all places and under all circumstances even peaceful picketing, and the state

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[3]*Printing Specialties and Paper Converters Union, Local 388, A. F. L., et al., Appellants, v. Howard F. LeBaron, etc., Appellee,* ..... F. 2d ..... Decided December 13, 1948, C. C. A. 9:

"It remains to inquire briefly whether the Act, as so construed, infringes the constitutional right of free speech.[2] ([2]The claim that the injunction subjects workers to involuntary servitude as prohibited by the Thirteenth Amendment is patently groundless.) We think the decision in Carpenters Union v. Ritter's Cafe, 315 U. S. 722, answers the question in the negative.[3] ([3]*Cf.*, also, United Brotherhood of Carpenters and Joiners of America v. Sperry, *supra.*) In substance the Court held that the state has the right to determine whether the common interest is best served by imposing restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces. 'It is true,' said the Court (p. 727), 'that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication.' And the Court added that the adoption of a contrary view would compel the state 'to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.'

"Appellants insist that under the holding in Bakery Drivers Local v. Wohl, 315 U. S. 769, picketing directed at the product of the employer is within the area of free speech guaranteed by the First Amendment. The circumstances of that case were peculiar and the decision was influenced by the extraordinary nature of the facts involved. The Court thought it was practically impossible for the union to make known its legitimate grievances except by the means there employed and contemplated. And it observed that 'a state is not required to tolerate in all places and under all circumstances even peaceful picketing by an individual.' "

has a right to regulate such activities, as in this case it has done.

May we point out that none of the decisions relied upon by the respondents as pronounced by the Supreme Court of the State of California involved the "secondary boycott and hot cargo law" except *In re Blancy, supra*, which decision we here seek to have reviewed.

The numerous California decisions which recognize the right of the secondary boycott were decided prior to the enactment of this law, or at least did not have the law under consideration, and each of these decisions recognized that questions of public policy and the enactment of legislation to curb these activities belonged exclusively to the Legislature.[4]

We respectfully direct your attention to the majority opinion of the Supreme Court of California in *In Re Blancy, supra* [R. 19] where the Court said:

> "This subject is difficult, highly controversial, and has engendered conflicting decisions by the state courts, without any sure guide in the decisions of the United States Supreme Court. Only the most general principles have been laid down by that court. We know that when a union aims its power of sec-

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[4]In *McKay v. Retail Automobile Salesmen's Local Union, 1067*, 16 Cal. 2d 311, 331, the Court remarked that for better labor relations,

> "The remedy lies with the Legislature, not with the Courts."

And in *C. S. Smith Met. Mkt. Co. Ltd. v. Lyons*, 16 Cal. 2d 389, 400, the Court said:

> "With reference to the power that is placed in the hands of a few persons by combinations and organizations on either side that these are considerations for the law-making power, not for the Courts."

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ondary boycott against businesses not connected with the industrial dispute, it goes beyond the limits of constitutional protection and is subject to regulation by the state (Carpenters & Joiners Union v. Ritter's Cafe, *supra*), and we know also that the state cannot confine the concerted action of labor to steps against the unfair employer alone (Cafeteria Employees Union v. Angelos, *supra;* Bakery Drivers Local v. Wohl, *supra*). Somewhere between these extremes, the line may be drawn, *but it should be drawn in a case wherein the issue is directly presented, and is necessary for the decision, in order that an authoritative and binding pronouncement may be made by this court and, perhaps, by the United States Supreme Court.*" (Emphasis ours.)

Impliedly it would seem the California Supreme Court recognizes there are restrictions which the Legislature may place on the use of the secondary boycott and apparently seeks some guidance from this Court in defining the limits within which the Legislature may confine the activities of industrial combatants.

3. Respondents clearly are in error when they state that the California Supreme Court held that the Restraining Order was insufficient and invalid under California law. The California Supreme Court invoked the federal constitution and held that the law was uncertain and therefore in violation. The federal questions were raised as we have heretofore pointed out, in the first instance, by the respondents, and we have met them throughout this

litigation, and the California Supreme Court's decision turned clearly upon the constitutionality or unconstitutionality of the statute involved. We were denied relief from the Supreme Court of California in any form for the Petition for Rehearing prayed that the case be referred to the lower Court, but this was denied. The Supreme Court of California completely disregarded the separability clause, which in the last analysis should have been invoked by that Court to save the legislation.[5]

Respondents in an effort to avoid a ruling by this Court upon the merits intimate that the only one concerned in this action is Farmer Bros. Co., who has been styled the "real party in interest." That is merely a descriptive title to distinguish the company from the People of the State of California and the Superior Court. May we respectfully direct your attention to the fact that the Petition for Certiorari and the briefs in this case have all been signed by the County Counsel of Los Angeles County, State of California, who has filed a formal appearance in this case and appears in this brief and upon the Petition for Writ of Certiorari for the People of the State of California acting through its Superior Court in an endeavor to protect the Orders of that Court and to preserve its dignity, and such County Counsel acts pur-

---

[5]Petition for Rehearing [R. 217-223]. As to the duty of a Court in saving legislation, see *Electric Bond & Share Co. v. Sec. & Exchange Com.*, 303 U. S. 418, together with cases collected commencing at page 18 in Petitioners' Opening Brief. See also *U. S. v. Petrillo*, 332 U. S. 1.

suant to law and is charged with the duty of protecting the interest of the People and maintaining the integrity of its Courts and the respect due the Courts and Orders issued therefrom. The County Counsel also appeared before the Supreme Court of California and upon the briefs.[6]

## III.
## Conclusion.

We dissent from the assertion that this case is moot and that the Petition should be dismissed, for the reasons we have heretofore set forth, and we assert that the federal question is clearly before this Court for decision upon the all-important question of the constitutionality or unconstitutionality of the statute involved. It would appear that even the Supreme Court of California asked for guidance at the hands of this Court. [R. 196.]

A decision in this case would be far reaching, for the statute involved was enacted by the Legislature in the first instance, passed over the veto of the Governor of the State of California, and enacted by the People themselves in a referendum. Surely they have fixed the policy of the state and have indicated their desire to fix the

---

[6]See §7½, Article XI California Constitution; §14, Article IV of the County Charter, Los Angeles County, California; §20, Article XI of said Charter; §§26524, 26529 Government Code, State of California; §26529 Government Code provides:

> "In counties which have a County Counsel appointed pursuant to Chapter 12 of this part, the County Counsel shall discharge all the civil duties vested by law in the District Attorney."

§§27640-27644, 27642 Government Code, California. See also §25 County Charter, Los Angeles County, California.

limits of the area within which these labor disputes might be conducted in the interest of all of the people. We respectfully urge that the statute involved is constitutional and was struck down as unconstitutional on insufficient grounds. The Legislature of the State of California in 1947 struck out the war-time limitation as to the duration of this statute and made it a permanent part of our Labor Code. We respectfully urge that the decision of the Supreme Court of the State of California be reversed to the end that the statute involved herein may be held constitutional.

Respectfully submitted,

RUSSELL E. PARSONS,
*Attorney for Petitioner Farmer Bros. Co., a corporation, the real party in interest.*

HAROLD W. KENNEDY,
*County Counsel,*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., A CORPORATION, the real parties in interest,

*Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## BRIEF FOR RESPONDENTS L. L. SYLVANE HOMER FORD AND IRV MAGISEN.

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## SUBJECT INDEX


| | PAGE |
|---|---|
| Opinion below | 1 |
| Statute involved | 1 |
| Statement of the case | 2 |

## TABLE OF AUTHORITIES CITED

### CASES.


| | PAGE |
|---|---|
| Ah Men, Ex parte, 77 Cal. 198, 11 Am. St. Rep. 263, 19 Pac. 380 | 3 |
| Anargyros, S., v. Anargyros & Co., 191 Fed. 208 | 3 |
| Capron v. West, 114 Cal. App. 633 | 7 |
| Chrisman v. Culinary Workers, Local 62, 46 Cal. App. 2d 129 | 7 |
| Cosby v. Superior Court, 110 Cal. 45, 42 Pac. 460 | 3 |
| Frowley v. Superior Court, 158 Cal. 220, 110 Pac. 817 | 3 |
| Hammond Lumber Co. v. Sailors' Union, 167 Fed. 809 | 3 |
| Hampton, In re, 98 Cal. App. 480 | 5 |
| Hollis, Ex parte, 59 Cal. 405 | 3 |
| Janafsky v. Garland, 42 Cal. App. 2d 655 | 7 |
| Kimball v. Kimball, 174 U. S. 158 | 7 |
| Lake, In re, 65 Cal. App. 426 | 4 |
| McCarty, In re, 154 Cal. 534, 98 Pac. 540 | 3 |
| McClatchy v. Superior Court, 119 Cal. 413, 39 L. R. A. 691, 51 Pac. 696 | 3 |
| Mefferd, Ex parte, 110 Cal. App. 1 | 5 |
| Myers v. Superior Court, 31 Cal. App. Dec. 520, 189 Pac. 109 | 3 |
| Newport Light Co. v. Newport, 151 U. S. 527 | 6 |
| Schwartz v. Superior Court, 111 Cal. 106, 43 Pac. 580 | 3, 4 |
| Tregea v. Modesto Irrigation Dist., 164 U. S. 179 | 7 |


### STATUTES


| | |
|---|---|
| California Code of Civil Procedure, Sec. 1209, Subsec. 5 | 1 |
| California Labor Code, Secs. 1131-1136 | 8 |
| California Statutes (1941), Chap. 623 | 8 |


### TEXTBOOKS


| | |
|---|---|
| 5 California Jurisprudence, pp. 938, 939 | 4 |

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*Respondents.*

## BRIEF FOR RESPONDENTS L. L. SYLVANE HOMER FORD AND IRV MAGISEN.

### Opinion Below.

The opinion of the Supreme Court of the State of California annulling the judgments committing the respondents for contempt and discharging the respondents is set forth in the transcript of record at page 215.

### Statute Involved.

Respondents Homer Ford, Irv Magisen and L. L. Sylvane were charged in the Court below with contempt of court as defined in Section 1209, subsection 5, of the Code of Civil Procedure of the State of California [R. 130, 145 and 167, respectively].

## Statement of the Case.

The applicants for certiorari apparently did not make it clear to this Honorable Supreme Court of the United States that they are seeking review of a judicial decree to which they are not parties. The decree in question came before the Supreme Court of California on application by respondents for a Writ of Review of their commitment for contempt. The Supreme Court of California discharged respondents [R. 216]. The reference to petitioner as being the Superior Court arises out of a procedural method in California where proceedings in contempt against parties violating orders in a civil action are prosecuted by the court that issued the injunction.

The within proceedings arise out of the following facts: Farmer Bros. Co., on May 21, 1946, commenced in the Superior Court an action for injunction and damages against numerous labor unions and individuals. The complaint is set forth in the present transcript of record commencing on page 7. Your respondents Irv Magisen, Homer Ford and L. L. Sylvane are mentioned as defendants, individually and as agents and representatives of the labor unions.

A consideration of the complaint will disclose that it is alleged that on April 29, 1946, respondents and others placed a picket line about the plant of Farmer Bros. Co., coupled with allegations that said pickets were not employed in said company. In paragraph XXII of said complaint [R. 16] there is an allegation that the defendants, including Irv Magisen, a respondent herein, were reported to have stated to employees that they would place a picket line about the place of unidentified customers, suppliers and carriers.

The contempt proceedings against respondents are predicated solely on affidavits of Roy Farmer, appearing at R. 81 and R. 97. It was the position of the respondents in the Supreme Court of California that these affidavits upon which the contempts were based were jurisdictionally defective and lacking in substance of matters essential to confer jurisdiction upon the petitioner court to entertain the citation for contempt in the first place.

Under California law contempt of court is a public offense, a misdemeanor, and contempt proceedings are of a criminal nature even though originating from a civil action:

*Frowley v. Superior Court*, 158 Cal. 220, 110 Pac. 817;

*In re McCarty*, 154 Cal. 534, 98 Pac. 540;

*McClatchy v. Superior Court*, 119 Cal. 413, 39 L. R. A. 691, 51 Pac. 696;

*Schwartz v. Superior Court*, 111 Cal. 106, 43 Pac. 580;

*Cosby v. Superior Court*, 110 Cal. 45, 42 Pac. 460;

*Ex parte Ah Men*, 77 Cal. 198, 11 Am. St. Rep. 263, 19 Pac. 380;

*Ex parte Hollis*, 59 Cal. 405;

*Myers v. Superior Court*, 31 Cal. App. Dec. 520, 189 Pac. 109;

*S. Anargyros v. Anargyros & Co.*, 191 Fed. 208;

*Hammond Lumber Co. v. Sailors' Union*, 167 Fed. 809.

The facts constituting the contempt must be stated in an appropriate form in an affidavit and the party charged has the same right to be heard in his defense as he would against the charge of a crime.

On the irrefutable authorities of California the proceedings must be examined in the light of the sufficiency of the charging affidavits and no other records. We respectfully refer to the ruling in the case of *Schwartz v. Superior Court,* reported in 111 Cal. at p. 112. In this case the law was pronounced by the Supreme Court of California to be as follows:

> "Contempt being a criminal proceeding, and the party being entitled to know with what he is charged, it will not be presumed that he was held guilty of some act not specifically alleged in the affidavit or fairly covered thereby. The offense being criminal in its nature, both the charge and the finding and judgment of the court thereon are to be strictly construed in favor of the accused. (*Batchelder v. Moore,* 42 Cal. 412; *Maxwell v. Rives,* 11 Nev. 221; *Phillips v. Welch,* 12 Nev. 158, 187.)"

In addition to the *Schwartz* case, *supra,* we respectfully allude to the holding in the case of *In re Lake,* which in an Appellate Court decision reported in 65 Cal. App. on page 426, wherein the following appears:

> "There is no deviation from the rule that unless the affidavit charging constructive contempt 'contains a statement of facts which shows on its face that a contempt has been committed, the court is without jurisdiction to proceed in the matter, and any judgment of contempt thereon is void.'" (5 Cal. Jur., pp. 938, 939.)

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The Supreme Court, upon review of the commitments of respondents, annulled the judgments and orders of commitment in each case and discharged each of the respondents [R. 216].

Such discharge is a final determination of the cause and the only means of prosecuting respondents for contempt is by an entirely new prosecution for contempt. (*In re Hampton,* 98 Cal. App. 480; *Ex parte Mefferd,* 110 Cal. App. 1.)

The respondents, L. L. Sylvane, Homer Ford and Irv Magisen, now urge this Honorable Supreme Court of the United States to dismiss the Writ of Certiorari on the following grounds:

1. That the decision of the Supreme Court of California, which construed the original rule for contempt, did not present a federal question.

2. The act of the Supreme Court of California in ordering the court below to discharge the rule for contempt, was not subject to review in this court.

3. The case is now moot.

In discussing the foregoing grounds for motion to dismiss, it is important to note that the conduct claimed to constitute contempt consisted of no more than peaceful picketing, a course of conduct not proscribed by the restraining order [R. 83, Subsec. C; R. 99, Subsec. C].

It should be borne in mind that the proceedings under review pertain and relate solely to the question as to whether these respondents were guilty as a matter of law of contempt of a valid order of the petitioner court. The Supreme Court of California on review held that the respondents were not guilty of contempt and discharged them.

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**When the highest court of a State holds that a party thereto is not guilty of contempt, no Federal question is presented.**

In *Newport Light Co. v. Newport,* 151 U. S. 527, Mr. Justice Jackson, speaking for the court, said:

> "This court has never gone to the extent of holding that such an order, as is here sought to be reviewed, was either a final judgment of the highest court of a State, or presented a Federal question, such as would entitle a party to have the judgment reexamined here. The case presented both in the lower court and the appellate court of Kentucky was simply whether the acts of the defendants in error could be properly considered a violation of the injunction granted in the original cause. . . .
>
> ". . . If the proceeding below, being for contempt, was independent of and separate from the original suit, it cannot be reexamined here either by writ of error or appeal. This was decided more than fifty years ago in *Ex parte Kearney,* 7 Wheat. 38, and the rule then established was followed as late as *New Orleans v. Steamship Company,* 20 Wall. 387. The court held that it had no jurisdiction, and dismissed the writ of error.
>
> "No decision of this court has gone so far as to hold that the construction which the highest court of a State places upon its own judgment, and under which construction it holds that a party thereto has not been guilty of contempt, presents a Federal question, such as would confer jurisdiction upon this court to reexamine or reverse such a judgment.
>
> ". . . This court is not called upon to review the correctness or incorrectness of this reasoning on which the Court of Appeals reached its conclusion

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that the order of the lower court was erroneous. The judgment of the Court of Appeals, whatever may have been the reasons assigned therefor, merely reversed the action of the lower court, declaring that the defendants in error were in contempt, and directed that court to discharge the rule against them.

"For the foregoing reasons we think no Federal question is presented by the writ of error, and it is hereby dismissed."

Although the petition and brief for petitioners refers to Farmer Bros. Co. as being the real party in interest, the records of the Superior Court in the action involved herein show that Farmer Bros. Co. dismissed its complaint with prejudice on October 15, 1947, prior to the application by the petitioners for a rehearing in the Supreme Court of California. The case is now moot.

*Kimball v. Kimball,* 174 U. S. 158;

*Tregea v. Modesto Irrigation Dist.,* 164 U. S. 179.

Whether the decision of the Supreme Court of California was legally correct is immaterial to Farmer Bros. Co. or to the Superior Court since Farmer Bros. Co. has no interest in this case by reason of its dismissal, and the Superior Court is bound by the rulings of the Supreme Court of the State of California.

*Chrisman v. Culinary Workers, Local 62,* 46 Cal. App. 2d 129;

*Janofsky v. Garland,* 42 Cal. App. 2d 655;

*Capron v. West,* 114 Cal. App. 633.

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Respondents contend that Sections 1131-1136 of the Labor Code of the State of California, as added by California Statutes 1941, Chap. 623, commonly referred to as the "Hot Cargo" Law, are not involved in this proceeding and that the only question involved herein was whether or not respondents were guilty of contempt. If, in the Court's determination, the "Hot Cargo" Law is involved, respondents respectfully request that they have the right to reserve discussion of the constitutionality of that law upon the oral argument, if this Honorable Supreme Court, after considering the contentions heretofore presented, on its motion does not dismiss the proceedings herein.

Respectfully submitted,

DAVID SOKOL,

*Attorney for Respondents.*

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*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,
*Respondents.*

## MOTION TO DISMISS WRIT OF CERTIORARI.

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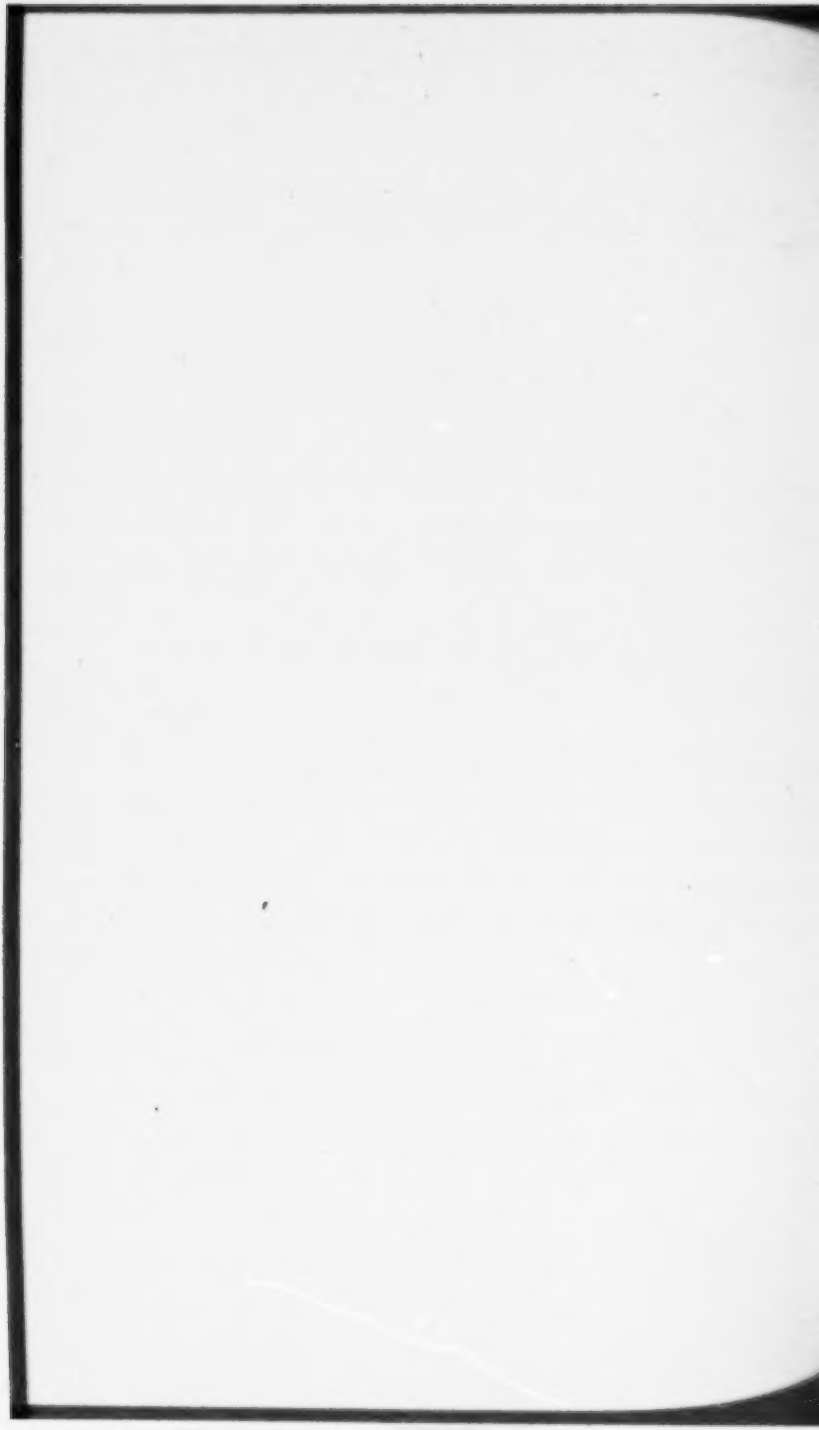
## SUBJECT INDEX


| | PAGE |
|---|---|
| Argument | 2 |
| Authorities | 4 |


---

## TABLE OF AUTHORITIES CITED


| CASES | PAGE |
|---|---|
| Hampton, In re, 98 Cal. App. 480 | 5 |
| Kimball v. Kimball, 174 U. S. 158 | 5 |
| Mefferd, Ex parte, 110 Cal. App. 1 | 5 |
| Newport Light Co. v. Newport, 151 U. S. 527 | 4 |
| Tregea v. Modesto Irrigation Dist., 164 U. S. 179 | 5 |



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*Respondents.*

## MOTION TO DISMISS WRIT OF CERTIORARI.

*To the Honorable Fred Vinson, Chief Justice of the Supreme Court of the United States and to the Honorable Associate Justices:*

The respondents, Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen, now move this Honorable Supreme Court of the United States to dismiss the Petition for Writ of Certiorari herein on the following grounds:

1. The case is now moot for the reason that prior to the filing of the petition for the Writ of Certiorari in

this Court, the real party in interest, Farmer Bros. Co., a corporation, dismissed its action in the Superior Court of the State of California in and for the County of Los Angeles, with prejudice.

2. That the petition for the Writ of Certiorari herein does not present a Federal question in that no Federal question is presented when the highest Court of a State holds that a party is not guilty of contempt.

**Argument.**

The record filed with this Court on the petition for the Writ of Certiorari did not contain the Dismissal with Prejudice filed by the real party in interest, Farmer Bros. Co., a corporation, in the Court below.

This omission has now been corrected by a stipulation between the parties, filed with the Clerk of this Honorable Supreme Court of the United States, which stipulation has attached to it a certified copy of the Dismissal and to which document reference is hereby made for further particulars.

The Dismissal with Prejudice last above referred to, was entered of record by the Clerk of the Superior Court of the State of California in and for the County of Los Angeles, on October 15, 1947, which was prior to the application by the petitioners for a rehearing in the Supreme Court of California.

The Dismissal by Farmer Bros. Co. now makes this proceeding moot in view of the fact that the petition for the Writ of Certiorari is grounded upon the contention

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that the petitioners in interest were deprived of the equal protection of the laws and due process of law in violation of the 14th Amendment. Since the petitioners in interest have dismissed their case with prejudice and can no longer assert any rights thereunder, the action is now moot.

It is fundamental that when an action has been dismissed with prejudice, the party so dismissing has no further standing in Court and cannot seek redress in any manner. It is equally fundamental that the party in whose favor the action has been dismissed would be denied the equal protection of the law if, after a dismissal, the party dismissing was heard to take further steps in pursuance of a dismissed action.

The Supreme Court of California discharged the respondents without remanding them to the Court below. This operated as a final determination and an acquittal of the respondents.

Since the highest Court of California held that the respondents were not guilty of contempt, no Federal question is presented.

**Authorities.**

In *Newport Light Co. v. Newport*, 151 U. S. 527, Mr. Justice Jackson, speaking for the court, said:

> "This court has never gone to the extent of holding that such an order, as is here sought to be reviewed, was either a final judgment of the highest court of a State, or presented a Federal question, such as would entitle a party to have the judgment reexamined here. The case presented both in the lower court and the appellate court of Kentucky was simply whether the acts of the defendants in error could be properly considered in violation of the injunction granted in the original cause. . . .
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> ". . . If the proceeding below, being for contempt, was independent of and separate from the original suit, it cannot be reexamined here either by writ of error or appeal. This was decided more than fifty years ago in *Ex parte Kearney*, 7 Wheat. 38 and the rule then established was followed as late as *New Orleans v. Steamship Company*, 20 Wall. 387. The court held that it had no jurisdiction, and dismissed the writ of error.
>
> "No decision of this court has gone so far as to hold that the construction which the highest court of a State places upon its own judgment, and under which construction it holds that a party thereto has not been guilty of contempt, presents a Federal question, such as would confer jurisdiction upon this court to reexamine or reverse such a judgment.
>
> ". . . This court is not called upon to review the correctness or incorrectness of this reasoning on which the Court of Appeals reached its conclusion that the order of the lower court was erroneous. The judgment of the Court of Appeals, whatever

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may have been the reasons assigned therefor, merely reversed the action of the lower court, declaring that the defendants in error were in contempt, and directed that court to discharge the rule against them.

"For the foregoing reasons we think no Federal question is presented by the writ of error, and it is hereby dismissed."

See also:

*In re Hampton,* 98 Cal. App. 480;

*Ex parte Mefferd,* 110 Cal. App. 1.

As authority for the proposition that the case is now moot, see *Kimball v. Kimball,* 174 U. S. 158; and *Tregea v. Modesto Irrigation Dist.,* 164 U. S. 179.

Upon the foregoing the respondents, therefore, move this Honorable Court to dismiss the Petition for Writ of Certiorari.

Respectfully submitted,

DAVID SOKOL,

*Attorney for Respondents L. L. Sylvane, Homer Ford and Irv Magisen;*

V. P. LUCAS,

*Attorney for Respondents Gay Lillefloren and Russell Marks.*

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## SUBJECT INDEX


PAGE

Opinion below ..... 1

Jurisdiction ..... 1

Statute involved ..... 2

Statement of the case ..... 2

Summary of argument ..... 6

Argument ..... 8

I.

Petitioner's action in dismissing the complaint herein with prejudice renders the instant proceeding moot ..... 8

II.

The constitutionality of the California "Hot Cargo" Act, considered by the California Supreme Court in the Blaney case, is not involved in the present appeal ..... 11

III.

Petitioner is not in a position to assert that it has been denied rights under the Federal Constitution, even assuming that there is merit in such contention, which respondent deny ..... 15

A. The California courts did not deny petitioner relief ..... 15

B. Petitioner did not raise the issue that it was denied federal rights before the California courts and is precluded from doing so here ..... 15

C. Petitioner ignores the construction placed on the injunctive decree herein by the California Supreme Court ..... 17

D. Petitioner has no right, under the laws of California, to relief from alleged "secondary" activities of respondents 19

E. Petitioner has not been denied equal protection of the law ..... 20

F. Petitioner has a remedy, indeed an exclusive remedy, under the National Labor Relations Act as amended ..... 22

Conclusion ..... 23

## TABLE OF AUTHORITIES CITED

CASES. PAGE


Allen Bradley, Local 11, v. Wisconsin Employment Relations Board, 315 U. S. 740 ..... 23
American Federation of Labor v. Swing, 312 U. S. 321 ..... 14
Bakery & Pastry Drivers v. Wohl, 315 U. S. 769 ..... 14
Bell, In re, 19 Cal. 2d 488, 122 P. 2d 22 ..... 20
Bethlehem Steel Co. v. New York State Board, 30 U. S. 767 ..... 22
Blaney, In re, 30 A. C. 648, 180 P. 2d 892 ..... 2, 6, 7, 11, 12, 13, 14
Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28 ..... 13
Buck's Stove & Range Co. v. American Federation of Labor, 219 U. S. 581, 55 L. Ed. 345 ..... 9
Carpenters Local v. Ritter's Cafe, 315 U. S. 722 ..... 20
Carpenters Local v. Ritter's Cafe, No. 527, Oct. Term, 1941, pp. 14-17 ..... 20
DeJonge v. Oregon, 299 U. S. 353 ..... 14
Duke Power Co. v. Greenwood County, 299 U. S. 259, 81 L. Ed. 178 ..... 9
Fortenbury v. Superior Court, 16 Cal. 2d 405, 106 P. 2d 411 ..... 20
Gompers v. Buck's Stove & Range Co., 221 U. S. 419, 55 L. Ed. 797 ..... 8, 10
Hill v. Florida, 325 U. S. 538 ..... 22
Home Loan Owners' Corp. v. Hoffman, 134 F. 2d 313 ..... 10
Hughes v. Superior Court, 32 A. C. 896 ..... 13, 19
Lisse v. Local Union, 2 Cal. 2d 312, 41 P. 2d 314 ..... 19
Lund v. Auto Mechanics, 16 Cal. 2d 374 ..... 20
Lynch v. New York, etc., 293 U. S. 52, 79 L. Ed. 191 ..... 16
Lyons, In re, 27 Cal. App. 2d 293 ..... 19
McKay v. Retail Automobile Salesmen, 16 Cal. 2d 311, 106 P. 2d 373 ..... 19
Memphis & Charleston Ry. Co. v. Pace, 282 U. S. 241 ..... 13
Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 321 U. S. 281 ..... 13
Morris, In re, 194 Cal. 63 ..... 10
Northwestern Pacific Ry. Co. v. Lumber & Saw Mill Workers, 31 A. C. 448 ..... 7, 20



POOR COPY

BLEED THROUGH

PAGE

Parkinson Co. v. Building Trades Council, 154 Cal. 581, 98 Pac. 1027 ..... 19
Perlman v. 322 West 72nd Company, 127 F. 2d 716 ..... 10
Pierce v. Stablemen's Union, 156 Cal. 70, 103 Pac. 324 ..... 19
Porterfield, In re, 28 Cal. 2d 91, 168 P. 2d 706 ..... 12, 20
Senn v. Tile Layers' Protective Ass'n, 301 U. S. 468 ..... 17
Shafer v. Registered Pharmacists, 16 Cal. 2d 379, 106 P. 2d 403 20
Smith Metropolitan Market v. Lyons, 16 Cal. 2d 389, 106 P. 2d 414 ..... 20
St. Pierre v. United States, 319 U. S. 40, 87 L. Ed. 1199 ..... 9
Steiner v. Long Beach Local, 19 Cal. 2d 676 ..... 20
Thornhill v. Alabama, 310 U. S. 88 ..... 14
Truax v. Corrigan, 257 U. S. 312 ..... 17
Union Labor Hospital Assn. v. Vance Redwood Lumber Co., 158 Cal. 551 ..... 19
United States v. C. I. O., 335 U. S. 106 ..... 14

STATUTES

California Code of Civil Procedure, Sec. 1209, Subsec. 5 ..... 2, 10
California Constitution, Art. I, Sec. 9 ..... 12
California Labor Code, Secs. 1131-1136 (Stats. 1941, Chap. 623, par. 1, p. 2079) ..... 2
California Penal Code, Sec. 166, Subd. 4 ..... 10
Judicial Code, Sec. 237(b) ..... 1
National Labor Relations Act, Sec. 8(b)(1) ..... 22
National Labor Relations Act, Sec. 8(b)(2) ..... 22
National Labor Relations Act, Sec. 8(b)(4)(A) ..... 22
National Labor Relations Act, Sec. 303 ..... 22
United States Constitution, Fourteenth Amendment ..... 15, 17, 19

TEXTBOOKS

17 Corpus Juris Secundum, Sec. 7, p. 8 ..... 10
18 Hughes' Federal Practice, p. 248 ..... 9

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES and FARMER BROS. CO., a corporation, the real party in interest,

*Petitioners,*

*vs.*

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## BRIEF FOR RESPONDENTS GAY LILLEFLOREN AND RUSSELL MARKS.

### Opinion Below.

The opinion of the Supreme Court of California [R. 215] is reported in 31 Adv. Cal. Rep. 460, 190 P. 2d 265.

### Jurisdiction.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended. Petition for writ of certiorari was granted on October 11, 1948. Respondents insist, however, that this Court has no jurisdiction of this matter, no federal question being in issue or having been decided by the court below.

## Statute Involved.

The respondents herein were convicted of contempt under Section 1209, subsection 5 of the Code of Civil Procedure of the State of California. The so-called California "Hot Cargo" Act (Secs. 1131-1136 of the Labor Code of California, Statutes 1941, Ch. 623, par. 1, p. 2079) was declared unconstitutional by the Supreme Court of California in *In re Blaney,* 30 Adv. Cal. Rep. 648, 180 P. 2d 892, and is not in issue in this case.

## Statement of the Case.

Petitioner, in its Statement of the Case, has failed to apprise this Court of all of the facts relevant to a determination of whether any federal question is involved in this appeal and whether this Court has jurisdiction to either reverse or affirm the opinion herein of the Supreme Court of California. For instance, petitioner has failed to inform this Court, as it had previously failed to inform the Supreme Court of California, that it had dismissed its complaint herein (on which the restraining order and conviction for contempt is predicated) *with prejudice* as early as October 9, 1947. Furthermore, petitioner has failed to indicate to this Court that the issue of whether petitioner was denied due process of law or equal protection of the laws in violation of the Fourteenth Amendment (petitioner's question No. 2 under "Questions Presented") was not presented to or decided by either the trial court or the California Supreme Court. Finally, petitioner has failed to inform this Court that the trial court

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in the contempt proceeding found that the purpose of all respondents' and defendant union's alleged activities was to bring about the unionization of petitioner's employees [R. 170-172]. On the contrary, the Supreme Court of California specifically found that the restraining order was not predicated upon any theory of purpose to require the signing of a closed-shop agreement, but found that the restraining order "did not forbid the making of such demand [for a closed-shop contract] or engaging in the labor activity for such purpose" [R. 216].

Since the injunctive decree, for violation of which respondents were convicted of contempt in the trial court, is referred to in numerous portions of the brief, it may be well to reproduce it here. It reads in its entirety as follows [R. 54]:

"TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—MAY 22, 1946.

"Upon reading the verified complaint and affidavits filed by plaintiff in this action, and it appearing therefrom to the satisfaction of the court that this is a proper case for the issuance of a temporary restraining order, and that great and irreparable injury will result to plaintiff herein before this matter could be heard on notice, and good cause appearing therefor:

"It is hereby ordered that defendants, and each of them, be and appear before the above named court in the court room of Hon. Henry M. Willis, Judge thereof, in Department 34 of the above named court in the City Hall at Los Angeles, California, on the

31st day of May, 1946, at the hour of 9:30 A. M., then and there to show cause, if any they have, why an order should not be made by which they, and each of them, their agents, employees and attorneys, and each of them, and the officers, members, agents and organizers of defendant associations, and any committee or committees appointed by or acting for said defendants, or any of them, and each and every and all persons acting in concert with defendants or any of them, shall be restrained and commanded to desist and refrain, pending final determination of this action, and pending the hearing of this order, defendants and each of them, and all such persons are, and each of them is, hereby restrained and commanded to desist and refrain from doing, or attempting to do or causing to be done, by any means, method or device whatsoever, any of the following acts:

"(a) Combining or agreeing to cease performing or to cause any employee of Southern Pacific Company, California Motor Express, Ltd., Los Angeles Albuquerque Express, Railway Express Agency, Western Truck Lines, Ltd., Crow Transportation Company, United Parcel Service, Teskey Transportation Company, Los Angeles-Yuma-Phoenix Transportation Company, Brittingham's Commissary Company, New Victory Cafe, Turret Cafe, C. C. Rubbish Company, Signal Oil Company, Arrowhead Springs & Puritas Water Company, California Container Company, The Linde Air Products Company, The California Liquid Carbonic Company, or all or any of them, or either of them, or any other customer,

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supplier or carrier of plaintiff, to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff or furnishing any supplies to plaintiff in its business, or purchasing any supplies from plaintiff, or carrying, shipping, or receiving from or delivering to plaintiff, any freight or merchandise for plaintiff;

"(b) In any way carrying out or effectuating any such combination or agreement, or in any way giving any notices or making any threats intended or tending to effectuate or carry out any such agreement;

"(c) Provided, however, that nothing herein is intended or shall be construed to prohibit peaceful picketing when the same is not done pursuant to or for the purpose of carrying out any combination or agreement herein restrained or enjoined."

The opinion of the Supreme Court of California [R. 215-216], involved in this appeal, is extremely brief and holds simply that the injunctive decree in question is too broadly worded under principles of both California common law and California constitutional law. The Court specifically pointed out that the decree did not forbid the alleged illegal conduct of respondents concerning which petitioner complains.

## Summary of Argument.

Under the "Questions Presented," both in its petition for certiorari and in its principal brief, petitioner has raised the following two questions:

1. Is the decision of the Supreme Court of California in *In re Blaney,* 30 Adv. Cal. Rep. 648, 180 P. 2d 892, declaring unconstitutional the so-called California "Hot Cargo" Act (on which decision the California Supreme Court predicated its holding that the injunctive decree herein was illegal) erroneous under decisions of this Court?

2. Has petitioner been denied either due process of law or equal protection of the laws contrary to the Fourteenth Amendment by virtue of the fact that the injunctive decree herein (for violation of which respondents were convicted of contempt in the trial court) was declared illegal by the Supreme Court of California?

Respondents assert that neither of these questions can properly be considered by this Court for the following reasons:

1. The entire case is now moot, petitioner having withdrawn its complaint herein on which both the injunctive decree and the civil contempt conviction for violation of the injunctive decree are based.

2. The "Hot Cargo" Act considered in the *Blaney* case, as well as the injunctive decree in the instant case, were declared invalid by the Supreme Court of California on the grounds that they violated the state as well as the

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federal Constitution, and the determination of the Supreme Court of California concerning the validity of state laws under the state Constitution are conclusive on this Court. In any event, the decisions of this Court indicate that the decision of the California Court in the *Blaney* case is proper on federal grounds alone.

3. The issue of whether the petitioner was denied due process or equal protection of the laws was not raised in or considered by the courts below and so cannot be considered by this Court. In any event, the Supreme Court of California did not deny petitioner the relief it sought, the California Supreme Court having held simply that the decree as drawn was too broad and indefinite, the decree not being limited to activities pursuant to the alleged unlawful purpose claimed by petitioner, namely, the obtaining of a closed-shop contract in the absence of a majority vote. The alleged secondary activity of respondents or defendant union herein, unrelated to any unlawful purpose such as the procuring of an illegal closed-shop agreement, was not illegal in California under either statutory or common law, and petitioner thus has no right to protection against such activity. In any event, the petitioner had a remedy, indeed an exclusive remedy, before the National Labor Relations Board. The granting of protection to a common carrier, as a third party to a labor dispute, in the *Northwestern Pacific Ry. Co. v. Lumber & Saw Mill Workers'* case, 31 A. C. 448, and the refusal to grant petitioner, as a primary party, relief against so-called "secondary picketing" in the present case does not deny petitioner equal protection of the laws, the *Northwestern Pacific* case being entirely distinguishable by virtue of the fact that plaintiff there was the third party and was a common carrier, bound by law to perform certain services.

## ARGUMENT.

### I.

### Petitioner's Action in Dismissing the Complaint Herein With Prejudice Renders the Instant Proceeding Moot.

Unbeknown to respondents or to the California Supreme Court, petitioner, on October 9, 1947, dismissed the complaint herein *with prejudice*. The temporary restraining order herein, for violation of which respondents were convicted in the trial court of contempt, is predicated upon such complaint, and accordingly it would appear that the instant proceeding is moot if the contempt was of a civil rather than a criminal nature. In any event, the claim of petitioner under the second of its "Questions Presented" (that it was denied due process of law or equal protection of the laws by reason of denial to it of relief under the allegations of its complaint) is clearly rendered moot, petitioner by its own action having indicated that it is in no need of relief.

The case of *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 419, 55 L. Ed. 797, is in point. There, the appeal by Samuel Gompers from a conviction for contempt for violation of a labor injunction was held to be rendered moot by virtue of the fact that the litigation between the parties had been settled. This Court made the following applicable statements in that case:

> "When the main case was settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled,—of course, without prejudice to

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the power and right of the court to punish for contempt by proper proceedings. . . . . If this had been a separate and independent proceeding at law for criminal contempt, to vindicate the authority of the court, with the public on one side and the defendants on the other, it could not, in any way, have been affected by any settlement which the parties to the equity cause made in their private litigation.

"But, as we have shown, this was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complainant. The company prayed 'for such relief as the nature of its case may require,' and when the main cause was terminated by a settlement of all differences between the parties, the complainant did not require, and was not entitled to, any compensation or relief of any other character. The present proceeding necessarily ended with the settlement of the main cause of which it is a part."

See, in addition to the foregoing:

Hughes' "Federal Practice," Vol. 18, p. 248;

*Duke Power Co. v. Greenwood County,* 299 U. S. 259, 81 L. Ed. 178;

*Buck's Stove & Range Co. v. The American Federation of Labor,* 219 U. S. 581, 55 L. Ed. 345;

*St. Pierre v. The United States,* 319 U. S. 40, 87 L. Ed. 1199.

*Cf.:*

*Home Loan Owners' Corp. v. Hoffman,* C. C. A. 8, 134 F. 2d 314;

*Perlman v. 322 West 72nd Company,* 127 F. 2d 716, C. C. A. 2 (1942).

The decision in the *Gompers* case and in the other cases above cited indicate that if the contempt proceedings herein were civil in nature, the present case has now become moot by virtue of the fact that the litigation has been settled by withdrawal of the complaint. That the contempt proceedings were in fact civil in nature is indicated by the fact that (1) Farmer Brothers, a private party, rather than the Superior Court of Los Angeles County, is prosecuting the present appeal and claims to be the real party in interest, and (2) the conviction for contempt herein was rendered under Section 1209, subdivision 5, of the Code of Civil Procedure [R. 156] which deals with civil contempt, rather than under Section 166, subdivision 4, of the Penal Code which deals with criminal contempt. (*Cf. In re Morris,* 194 Cal. 63, 67; 17 C. J. S., Sec. 7, p. 8.) However, there is no need for this Court to determine whether the contempt herein is civil or criminal in nature for the reason that, if criminal, petitioner has no standing either to prosecute this appeal or to raise constitutional issues affecting petitioner's claimed rights, the sole party in interest being the Superior Court of Los Angeles County; and if civil, then petitioner, by dismissing its complaint with prejudice, has lost its standing to assert constitutional rights and has rendered the case moot.

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## II.

### The Constitutionality of the California "Hot Cargo" Act, Considered by the California Supreme Court in the Blaney Case, Is Not Involved in the Present Appeal.

In the instant case the injunctive decree, for violation of which the contempt proceedings were instituted, was found to be invalid by the Supreme Court of California for the same reason that it held invalid the so-called "Hot Cargo" Act of California in the *Blaney* case, namely, because it was so loosely, broadly and vaguely worded as to previously restrain and impair the exercise by respondents of the fundamental right of free speech. Since the reasoning in the *Blaney* case was relied upon by the California Supreme Court in holding invalid the injunctive decree herein, it is claimed by petitioner that if the reasoning in the *Blaney* case is erroneous under decisions of this Court, then the California court's holding in the instant case must likewise be declared erroneous and the decision reversed. Aside from considerations of whether the adjudication in a contempt case can be used collaterally to obtain a review of a decision on constitutional law in another case (discussed in the brief for respondents Sylvane, Ford and Magisen and in the *amicus curiae* brief herein), the short answer to this contention of petitioner is that the *Blaney* case was decided on state as well as federal grounds, and the "Hot Cargo" Act held violative of the state as well as the federal Constitution.

The *Blaney* opinion is set forth in full commencing on page 181 of the Record herein. The gist of the opinion is that the "Hot Cargo" Act (which utilizes almost the identical language used in the injunctive decree herein) is so broadly, vaguely and loosely worded as to include the good with the bad and to prohibit activities protected as

an exercise of free speech along with activities not so protected, and thus to be invalid as a previous general restraint upon the exercise of fundamental rights. In support of this determination in the *Blaney* case, the Supreme Court of California cited numerous decisions of the California Supreme Court holding that peaceful picketing is protected as an aspect of free speech under both the federal and the state Constitutions.

Article I, Section 9, of the Constitution of the State of California reads as follows:

> "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

The *Blaney* decision quotes specifically from the recent decision of the Supreme Court of California in the case of *In re Porterfield,* 28 Cal. 2d 91, 168 P. 2d 706, as follows [R. 185]:

> "Various means of economic suasion such as picketing, the primary and secondary boycotts, and refusal to work together, often go to make up concerted efforts to induce nonmember employees to join a particular union. Such conduct may be performed in the exercise of civil liberties, *guaranteed by both our federal and state Constitutions."* (Emphasis supplied.)

The *Porterfield* decision contains the following additional language, indicating quite conclusively that California protects peaceful picketing as an aspect of free speech under the state as well as the federal Constitution:

> "The right of free speech, protected by the federal and state constitutional guaranties, is not an abso-

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lute right which carries with it into businesses and professions total immunity from regulation. . . .

"The main purpose of such constitutional provisions was to prevent previous restraint . . . or the stifling of efforts pointing towarding enlightenment of individuals upon or concerning their rights and beliefs and the duties of their rulers.

". . . The freedom of speech and of the press protected by the constitutional guaranties includes in the main, it has been said, freedom of expressions on political, sociological, religious and economic subjects, not commercial activities to which speech is only an incident or means."

The decision in the *Blaney* case, the reasoning of the many California cases dealing with the right of peaceful picketing as an aspect of free speech cited in the *Blaney* case, and the determination of both the majority and minority opinions in the very recent *Hughes v. Superior Court* case, 32 A. C. 896, all indicate that in California peaceful picketing is protected under California law as an aspect of free speech, and that the protection accorded peaceful picketing rests, or could rest, on state as well as federal grounds. Accordingly, the determination of the California Supreme Court that the "Hot Cargo" Act, as well as the injunctive decree herein, is unconstitutional is conclusive on this Court.

*Bob-Lo Excursion Co. v. Michigan,* 333 U. S. 28;
*Memphis & Charleston Ry. Co. v. Pace,* 282 U. S. 241.

*Cf.:*

*Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.,* 312 U. S. 281.

While, in view of the foregoing, it is not the purpose of this brief to enter into a discussion concerning the

validity under federal law of the determination of the Supreme Court of California in the *Blaney* case, it should be noted that the reasoning of the California court in that case was in direct accord with the reasoning of at least four of the Justices of this Court, as expressed in the concurring opinion in the recent case of *United States v. C. I. O.*, 335 U. S. 106. There, Justice Rutledge, in an opinion concurred in by Justices Black, Douglas and Murphy, asserted as follows:

> "Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage."

The "sweeping and highly indefinite restrictions" placed upon the activities of respondents under the injunctive decree in the present case are similarly destructive of constitutional guarantees. Under the provisions of the decree, respondents could attempt to engage in peaceful persuasion or peaceful advocacy of their cause in an effort to enlist the help of others in their labor dispute only at their peril. Such a previous general restraint cannot comport with the dictates of this Court in such cases as *Thornhill v. Alabama*, 310 U. S. 88, and *DeJonge v. Oregon*, 299 U. S. 353, even if it were assumed, contrary to the rationale of *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769, and *American Federation of Labor v. Swing*, 312 U. S. 321, that secondary activity involved herein or in the *Blaney* case itself were subject to prohibition.

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## III.

**Petitioner Is Not in a Position to Assert That It Has Been Denied Rights Under the Federal Constitution, Even Assuming That There Is Merit in Such Contention, Which Respondents Deny.**

The assertion by petitioner that it has been denied due process and equal protection of the law in violation of the Fourteenth Amendment is equally unavailing.

### A. The California Courts Did Not Deny Petitioner Relief.

To begin with, it should be noted that the California Supreme Court did not dismiss petitioner's complaint; it merely held that the temporary restraining order as drawn was insufficient and invalid under California law. For all that petitioner can tell, or, for that matter, for all that this Court can ascertain, petitioner may very well be entitled to all the relief he seeks under a decree more specifically and exactly drawn so as to meet the requirements of exactness as required by decisions of the California Supreme Court. In any event, as has been discussed above, petitioner, by voluntarily dismissing its complaint with prejudice, has precluded any assertion that it is being deprived of rights under the Fourteenth Amendment.

### B. Petitioner Did Not Raise the Issue That It Was Denied Federal Rights Before the California Courts and Is Precluded From Doing so Here.

A thorough examination of the record herein indicates that at no time did petitioner raise the constitutional issue asserted under the second of its "Questions Presented" before this Court either as contained in its petition for writ of certiorari or in its final brief herein. Even peti-

tioner's Petition for Rehearing before the California Supreme Court, which might be expected to raise the claim that the petitioner was deprived of constitutional rights under the California decision, even though it might be argued that failure to raise such claim at any earlier stage in the proceedings was excusable for the reason that petitioner had no indication prior to the issuance of the California Supreme Court's decision herein that it might be deprived of constitutional rights, is barren of the assertion now being made. The Petition for Rehearing is set forth on pages 217-228 of the record. The petition is divided into four main headings which read as follows:

> "I—The Hot Cargo Secondary Boycott Law Is Not so Vague and Indefinite as to Warrant Its Being Held Invalid."
>
> "II—The Blaney Decision Should Be Reconsidered in the Light of the Petrillo Decision."
>
> "III—The Separability Clause Should Save This Legislation."
>
> "IV—Under the Rules of Equity the Injunction Was Good, the Acts Complained of Were All Done to Coerce the Employer to Commit an Unlawful Act."

Even under the heading numbered "IV" above, petitioner made no assertion that the decision of the Supreme Court of California deprives it of any constitutional rights. Thus, the California Supreme Court has not been afforded an opportunity to pass upon the issue for the first time raised in this Court. It is submitted that under established principles laid down by this Court petitioner should not be heard on its second question. See

*Lynch v. New York, etc.*, 293 U. S. 52, 79 L. Ed. 191.

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### C. Petitioner Ignores the Construction Placed on the Injunctive Decree Herein by the California Supreme Court.

Even if this Court were to permit inquiry into the question of whether petitioner has been denied rights under the Fourteenth Amendment by virtue of the decision of the California Supreme Court herein, it should be noted that petitioner's argument (pp. 47-48 of its brief) in support of this assertion is predicated upon a construction of the injunctive decree which has been specifically rejected by the California Supreme Court, namely, that the decree enjoined certain activities by defendant union and its agents *because* undertaken or done in furtherance of an alleged illegal object—requiring petitioner to sign a closed-shop contract illegal under federal law. The substance of petitioner's argument seems to be that, since the defendant union and its agents were engaging in various activities for an unlawful purpose (the requiring of a closed-shop contract), which activities caused petitioner irreparable damage in the operation of its business, it was entitled, as a matter of due process of law, to injunctive relief against such activities. Although petitioner does not cite or refer to *Truax v. Corrigan*, 257 U. S. 312, in support of this contention, the shades of that decision are certainly being revived despite its subsequent dissipation under the decision of this Court in *Senn v. Tile Layers' Protective Ass'n*, 301 U. S. 468. However, there is no need to discuss the possible application of any doctrine contained in *Truax v. Corrigan*, or to consider whether the due process concept requires that petitioner be accorded injunctive relief under the circumstances of this case, for the reason that the Supreme Court of California, in construing the injunctive relief, found specifically that

the decree was not premised upon or limited to a situation in which the ultimate object was the illegal obtaining of a closed-shop contract. It stated in this respect as follows [R. 216]:

> "But here the restraining order did not forbid the making of such demand [compelling employer to sign a closed-shop contract] or engaging in the labor activity for such purpose."

There is nothing in the decision of the California Supreme Court to indicate that had the decree been worded so as to include a reference to an illegal demand, the petitioner would not have been able to obtain the relief it sought. It is respectfully submitted that this Court is bound by the construction placed upon the restraining order herein by the Supreme Court of California, and that under such construction petitioner is in no position to allege any deprivation of rights because of refusal by the California court to approve the particular restraining order involved in this proceeding.

Petitioner seems to suggest that the construction of the California Supreme Court of the restraining order herein is a sham and is in disregard of the "hard realities" of the case. However, the injunctive decree speaks for itself in this respect, and under it neither the California Supreme Court nor, what is more to the point, the respondents herein could know that the activities which respondents were enjoined from engaging in involved or were limited to any alleged illegal object of obtaining a closed-shop agreement. Furthermore, as is disclosed by the record, even the trial court assumed that respondents' purpose was to bring about the unionization of petitioner's employees rather than the compelling of a closed-shop agreement [R. 170-172].

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D. PETITIONER HAS NO RIGHT, UNDER THE LAWS OF CALIFORNIA, TO RELIEF FROM ALLEGED "SECONDARY" ACTIVITIES OF RESPONDENTS.

As appears from its decision [R. 169-180], the theory of the trial court apparently was that even though the ultimate object might be solely the unionization of petitioner's employees, nevertheless the alleged secondary activity was illegal and justified the restraint itself regardless of any ultimate purpose. If, from this, petitioner attempts to argue (although it has not done so in its brief) that it has been deprived of rights under the Fourteenth Amendment because it has not been protected against the alleged secondary activity, the short answer is that such secondary activity is not illegal under California law. In a long line of decisions, commencing forty years ago in *Parkinson Co. v. Building Trades Council*, 154 Cal. 581, 98 Pac. 1027, and affirmed as recently as November 1, 1948, in *Hughes v. Superior Court*, 32 A. C. 896, the Supreme Court of California has consistently held that "a secondary boycott, peacefully and properly conducted, is legal in California under the constitutional guarantee of the right of free speech."

*In re Lyons*, 27 Cal. App. 2d 293 at 306.

See also:

*McKay v. Retail Automobile Salesmen*, 16 Cal. 2d 311, 106 P. 2d 373;

*Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324;

*Union Labor Hospital Asso. v. Vance Redwood Lumber Co.*, 158 Cal. 551;

*Lisse v. Local Union*, 2 Cal. 2d 312, 41 P. 2d 314;

*Shafer v. Registered Pharmacists*, 16 Cal. 2d 379, 106 P. 2d 403;

*Lund v. Auto Mechanics*, 16 Cal. 2d 374;

*Smith Metropolitan Market v. Lyons*, 16 Cal. 2d 389, 106 P. 2d 414;

*Fortenbury v. Superior Court*, 16 Cal. 2d 405, 106 P. 2d 411;

*In re Bell*, 19 Cal. 2d 488, 122 P. 2d 22;

*Steiner v. Long Beach Local*, 19 Cal. 2d 676;

*In re Porterfield*, 28 Cal. 2d 91, 168 P. 2d 706.*

E. Petitioner Has Not Been Denied Equal Protection of the Law.

Petitioner's argument that it has been denied equal protection of the law, assuming that it can be asserted at this late stage, seems to depend upon an alleged discrimination effected by the California Supreme Court as a result of its decision in *Northwestern Pacific Railway Co. v. Lumber and Saw Mill Workers*, 31 A. C. 448, 189 P. 2d 277, where the Court granted relief to a common carrier who, as a third party to a labor dispute, was being prevented from transporting certain merchandise to or from the plant where the primary dispute existed. That case is entirely distinguishable. For one thing, the alleged neutral itself and not the employer party to the labor dispute was the complainant. More important, however, was the fact that the complainant in the *Northwestern*

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*Compare the rule of law set forth in the foregoing cases with the rule of law relied upon by the majority of this Court in *Carpenters Local v. Ritter's Cafe*, 315 U. S. 722, footnote 1 therein. That the authorities cited in the foregoing footnote 1 are of doubtful validity. See Petition for Rehearing in *Carpenters Local v. Ritter's Cafe*, No. 527, Oct. Term, 1941, pp. 14-17.

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*Railway* case was a common carrier, and it was by virtue of this fact and because of the violence involved that the California Supreme Court granted the injunction. The California Supreme Court stated in this respect as follows:

> "Plaintiff as a railroad common carrier, is under a duty imposed by the constitution and statutes of this state to accept freight for transportation from all shippers and to refrain from discrimination in service rendered to them. Calif. Const., Art. 12, sec. 21; Public Utilities Act, Statutes 1915, page 115, as amended; Sections 13(b), 17, 19, General Laws, Act 6386; Civil Code, Sections 2169, 2170. . . . It has been held that interference with the performance by a common carrier of its duties, by union activities in a labor dispute with a third person may be enjoined. Burlington Transportation Co. v. Hathaway, 149 A. L. R. 1243. In the instant case it is clear from the evidence, including the complaint, that a case was made out by plaintiff in showing interference in the performance of its duties as a common carrier by the concerted activities of defendants in a labor dispute between defendants and third parties, the lumber company. The object of the activity as well as the means employed to accomplish it would thus be unlawful—preventing or attempting to prevent the carrier from carrying out its statutory obligations—hence injunctive relief would appear to be proper."

On page 13 of its brief the petitioner asserts that the conduct of the respondents herein on which they were adjudged guilty of contempt constituted an interference with common carriers. The record definitely shows that the conduct of the respondents consisted of picketing the product of the petitioner Farmer Bros. Company, a corporation, and that the common carriers are not parties to

this action nor complaining in any way. The record also shows that the product which was being picketed had come to rest and that it was being picked up by the respondent corporation, the owner thereof, in its own trucks and with its own employees.

F. Petitioner Has a Remedy, Indeed an Exclusive Remedy, Under the National Labor Relations Act as Amended.

A final consideration applicable to petitioner's contention that it has been deprived of rights under the Fourteenth Amendment by virtue of an alleged refusal by the California Supreme Court to grant it the relief it sought is whether petitioner has not a remedy, indeed an exclusive remedy, before the National Labor Relations Board under the provisions of the National Labor Relations Act as amended. Sections 8(b)(1), 8(b)(2) and 8(b)(4)(A) of that Act could embrace the activities complained of herein (see also Section 303). Since petitioner is admittedly engaged in interstate commerce, it would have access to the Board, and through the Board to the courts, for injunctive relief. Accordingly, it would be in no position to complain that it has been deprived of all remedy against alleged illegal conduct of the union. Moreover, since Congress has legislated specifically in respect to the activities involved in petitioner's complaint, it might well be that petitioner is relegated exclusively to the National Labor Relations Board for any relief. (*Cf. Hill v. Florida*, 325 U. S. 538; *Bethlehem Steel Co. v. New York State Board*, 330 U. S. 767; *Allen Bradley, Local 11, v.*

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*Wisconsin Employment Relations Board,* 315 U. S. 740.) We refrain from elaborating upon this aspect of the case for the reason that the Supreme Court of California has had no opportunity to consider the question, but raise the issue merely as further indication of the insufficiency of any claim by petitioner that it has been denied rights under the Fourteenth Amendment.

## Conclusion.

For the foregoing reasons it is respectfully submitted that the proceedings herein be dismissed, and that the decision of the court below be affirmed.

Respectfully submitted,

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## Subject Index


Page

The facts and the state of the record ..... 1

I.

No constitutional point can be raised here since no constitutional issue was ever presented to the courts of the State of California ..... 3

II.

Petitioners have presented no justiciable constitutional issue to this court ..... 8

III.

The United States Supreme Court will not review a state court decision which rests upon non-federal grounds even though a federal question is also involved ..... 9

IV.

The United States Supreme Court will not disturb the construction placed on a state statute by the highest court of a state ..... 12

V.

The decision of the Supreme Court of California in the Lillefloren case, which furnished the occasion for the certiorari proceedings at bar, involved questions of California law. The rule in California regarding the right of peaceful boycott and peaceful picketing has developed an individual and distinct rule, and the Lillefloren decision conformed to this particular rule ..... 19

VI.

The right of free speech, subject only to the clear and present danger rule, has been upheld by this court for a quarter of a century, and this right has applied to peaceful picketing for almost a decade ..... 35

VII.

The so-called Hot Cargo Act was unconstitutional and void under all of the controlling authorities ..... 44

## Table of Authorities Cited


| Cases | Pages |
|---|---|
| Aero Mayflower Co. v. Bd. of R.R. Com'rs, 68 S.Ct. 167 (Dec. 8, 1947) | 16 |
| A. F. of L. v. Swing, 312 U.S. 321 | 43 |
| American Steel Foundries v. Whitehead, 256 U.S. 40 | 17 |
| American Mfg. Co. v. St. Louis, 250 U.S. 459 | 15 |
| Bakery and Pastry Drivers v. Wohl, 315 U.S. 769, 62 S.Ct. 816 (86 L. Ed. 1178) | 29, 32, 43 |
| Bakery and Salesdrivers v. Wagshal, 333 U.S. 437 | 43 |
| Baldwin Co. v. R. S. Howard Co., 256 U.S. 35 | 17 |
| Bridges v. California, 314 U.S. 252 | 44 |
| Broad River Power Co. v. South Carolina, 281 U.S. 537 | 13 |
| Cafeteria Employees v. Angelos, 320 U.S. 293 | 44 |
| Capital Nat'l Bank v. First Nat'l Bank, 173 U.S. 425, 19 S.Ct. 202 | 7 |
| Carpenters and Joiners v. Ritter's Cafe, 315 U.S. 722 (86 L. Ed. 1143) | 31, 32, 42 |
| Charleston Federal Sav. & Loan Ass'n v. Aldersen, 65 S.Ct. 624, 324 U.S. 182 | 6 |
| Chrisman v. Culinary Workers' Local, 49 Cal. App. (2d) 129 | 21 |
| C. I. O. v. McAdory, 325 U.S. 472, 65 S.Ct. 1395 | 6 |
| Connelly v. General Cons. Co., 269 U.S. 385 | 18 |
| DeJonge v. State of Oregon, 299 U.S. 353, 57 S.Ct. 255 (81 L. Ed. 278) | 40, 41 |
| Dorchy v. Kansas, 272 U.S. 306, 47 S.Ct. 86 | 43 |
| Emde v. San Joaquin County Labor Council, 23 Cal. (2d) 146 | 27 |
| Flournoy v. Wiener, 321 U.S. 253 | 11 |
| Fortenbury v. Superior Court, 16 Cal. (2d) 405 (106 P. (2d) 411) | 27, 29, 32, 35 |
| Fox Film Corp. v. Muller, 296 U.S. 207 | 13 |
| Fred Wolferman v. Root, (Sept. 8, 1947), 204 S.W. (2d) 733 | 34 |


POOR COPY

BLEED THROUGH

Pages

Gitlow v. New York, 268 U.S. 652, 45 S.Ct. 625, (69 L. Ed. 1138) ..... 40, 41
Green Bay & M. Canal Co. v. Patten Paper Co., 172 U.S. 58, 19 S.Ct. 97 ..... 7
Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444 (80 L. Ed. 660) ..... 40

Hague v. Committee, 307 U.S. 496 ..... 43
Hale v. Akers, 132 U.S. 554, 10 S.Ct. 171 (33 L. Ed. 442) 11
Hendrickson v. Apperson, 245 U.S. 105 ..... 15
Honeyman v. Hana, 300 U.S. 14, 57 S.Ct. 350 ..... 7
Hughes v. Superior Court, 32 A.C. 896 ..... 28

In re Bell, 19 Cal. (2d) 488 (122 P. (2d) 22) ..... 13, 21, 27
In re Blaney, 30 Cal. (2d) 643 (184 P. (2d) 892) .. 10, 21, 29, 43
In re Fortenbury, 38 Cal. App. (2d) 284 ..... 21, 31, 33
In re Lyons, 27 Cal. App. (2d) 293 ..... 21
In re Porterfield, 28 Cal. (2d) 91, 114 (168 P. (2d) 706, 167 A.L.R. 675) ..... 28

James v. Marinship, 25 Cal. (2d) 721 (155 P. (2d) 329, 160 A.L.R. 900) ..... 27, 28
Jefferson Branch Bank v. Skelly, 1 Black U.S. 436 ..... 17
Jordahl v. Hayda, 1 Cal. App. 696 (82 P. 1079) ..... 20, 21
Joseph Triner Coys v. McNeil, 363 Ill. 559, 2 N.E. (2d) 929 19

Kreling v. Superior Court, 18 Cal. (2d) 884 ..... 35

Lillefloren v. Superior Court, 31 Cal. (2d) 439 (189 P. (2d) 265) ..... 10, 22, 29, 33, 34
Lisse v. Local Union, 2 Cal. (2d) 312 (41 P. (2d) 314) .... 26
Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666 (82 L. Ed. 949) ..... 40, 41
Lund v. Auto. Mechanics, 16 Cal. (2d) 374 ..... 27

Mabee v. White Plains Pub. Co., 327 U.S. 178, 66 S.Ct. 511 7
Magill Bros. v. Bldg. Service etc. Union, 200 Cal. (2d) 506 48
McKay Jewelers v. Bowron (1942), 19 Cal. (2d) 595 ..... 47
McKay v. Retail Auto. Salesman, 16 Cal. (2d) 311 (106 P. (2d) 373) ..... 21, 22, 24, 26, 27, 31
McKay Telegraph Company v. Little Rock, 250 U.S. 74 ... 15

Page

Milk Wagon Drivers v. Meadowmoor Dairies, 312 U.S. 287, 61 S.Ct. 552 (85 L. Ed. 836, 132 A.L.R. 1200) ....29, 33, 42, 43

Minn. v. National Tea Co., 309 U.S. 551 ..... 11

M. K. & T. Ry. Co. v. McCann, 174 U.S. 580 ..... 17

Magill Bros. v. Bldg. Service Employees, 20 Cal. (2d) 506 (127 P. (2d) 542) ..... 27

McCullough v. Kammerer Corporation, 323 U.S. 327, 65 S.Ct. 297, 108 A.L.R. 721 ..... 7

McKay v. Retail Automobile Salesmen, 16 Cal. (2d) 311 (106 P. (2d) 373) ..... 6

Memphis Natural Gas Co. v. Beeler, 315 U.S. 649, 62 S.Ct. 857 ..... 6

Milwaukee Electric R. & Light Co. v. Wisconsin, 252 U.S. 1000 ..... 17

Morehead v. New York ex rel, Tipaldo, 298 U.S. 587....12, 15, 16

N. W. Pac. R. R. Co. v. Lumber & S. W. Union, 31 Cal. (2d) 441 ..... 34

Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625 (75 L. Ed. 1357) .....40, 41

New York v. Graves, 300 U.S. 308, 57 S.Ct. 466 ..... 6

Northwestern Pacific v. Lumber and Sawmill Workers, 31 Cal. (2d) 44 (189 P. (2d) 277) ..... 28

Pacific Live Stock Co. v. Oregon Water Board, 241 U.S. 440 ..... 16

Park & Tilford v. Teamsters, 27 Cal. (2d) 599 (165 P. (2d) 891, 162 A.L.R. 1426) .....28, 34

Parkinson Co. v. Building Trades Council (December, 1908), 154 Cal. 581 (98 P. 1027, 21 L.R.A. New Series 550, 16 Annotated Cases 1165) ..... 24

Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029 ..... 7

People v. Mintz, 106 Cal. App. 725 ..... 21

People v. Taylor, 33 Cal. App. (2d) Supp. 760 ..... 21

People v. Young, 136 Cal. App. 699 ..... 21

Perry Truck Lines v. Brotherhood of Teamsters (1939), 101 P. (2d) 436, 5 L.R.R. Man. 930 ..... 33

Pierce v. Stablemen's Union (July 6, 1909), 156 Cal. 70 (103 P. 324) .....24, 29, 30, 47, 49

POOR COPY

BLEED THROUGH

Pages

Schneider v. State, 308 U.S. 147, 60 S.Ct. 146 (89 L. Ed. 430) ..... 36, 40, 41
Senn v. Tile Layers, 301 U.S. 468, 57 S.Ct. 857 (81 L. Ed. 1229) ..... 35
Shafer v. Registered Pharmacists, 16 Cal. (2d) 379 (106 P. (2d) 403 ..... 26
Smiley v. Kansas, 196 U.S. 447, 25 S.Ct. 289 ..... 14, 17
Smith Metropolitan Market v. Lyons, 16 Cal. (2d) 389 (106 P. (2d) 414) ..... 6, 27
State Farm etc. Ins. Co. v. Duel, 324 U.S. 154, 65 S.Ct. 573 7
Steiner v. Long Beach Local, 19 Cal. (2d) 676 ..... 27, 48
St. L. I. M. & St. P. Ry. Co. v. Paul, 173 U. S. 404 ..... 17
Stromberg v. Carlson, 283 U.S. 359, 51 S.Ct. 532 (75 L. Ed. 1117, 73 A.L.R. 1484) ..... 40

Thomas v. Collins, 323 U.S. 516 ..... 44
Thornhill v. Alabama, 300 U.S. 88, 60 S.Ct. 736 (87 L. Ed. 1290) ..... 36, 37, 38, 39, 40, 41, 46, 48
Tri-City case (American Steel Foundries, 257 U.S. 184) .... 43
Tullis v. L. E. & W. Railroad Co., 175 U.S. 348 ..... 17

Union Labor Hospital Assoc. v. Vance Redwood Lumber Company, 158 Cal. 551 ..... 26
U. S. v. Rimer, 220 U.S. 547 ..... 17

Vallat v. Radium Dial Co. (360 Ill. 407), 196 N.E. 485, 104 A.L.R. 1435 ..... 19

Wall v. Chesapeake & Ohio Ry. Co., 256 U.S. 125, 41 S.Ct. 402 ..... 6

Yu Cong. Eng. v. Trinidad, 271 U.S. 500 ..... 18

**Statutes**

California Constitution:
Article I, Section 1 ..... 19
Article I, Section 9 ..... 2, 21
Article I, Section 10 ..... 2, 21, 23
Article I, Section 13 ..... 21

Pages

California Labor Code:
Section 1131ff ..... 45
Sections 1131 to 1136 ..... 22
Section 1134(a) ..... 45, 46

Stats. 1941 (Ch. 623, Sec. 1, p. 2079) ..... 22

United States Constitution:
First Amendment ..... 2, 36, 39, 40, 49
Fourteenth Amendment ..... 2, 21, 36, 39, 49

**Texts**

Am. Jur. Constitutional Law, Para. 585, p. 282..... 18

Teller on Labor Disputes, Vol. I, Section 123 ..... 32

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1948

No. 191

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO. (a corporation), the real party in interest,

*Petitioners,*

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

*Respondents.*

## BRIEF OF AMICUS CURIAE ON BEHALF OF THE CALIFORNIA STATE FEDERATION OF LABOR.

### THE FACTS AND THE STATE OF THE RECORD.

This amicus curiae California State Federation of Labor respectfully suggests to this Court:

(1) That no constitutional issue was ever presented to the Supreme Court of California by petitioner, and therefore none can be presented here. Indeed, we urge that petitioner has presented no justiciable constitutional issue whatever in his petition or brief; and

(2) That the Lillefloren case was decided by the Supreme Court of California pursuant to rules of decision laid down by the Courts of California over a period of many years and that this Court in other similar situations has refused to review the rules of the State Court; and

Lastly, we argue that (if this Court should consider the merits of the controversy) the provisions of the so-called Hot Cargo Act are unconstitutional and void under sections 9 and 10 of Article I of the Constitution of California as well as under the First and Fourteenth Amendments to the Federal Constitution.

The brief for petitioner details at great length the allegations of the original complaint, and at the top of page 3 counsel states, as one of the two questions presented to the Court, whether the denial by the Supreme Court of California "of relief under the facts set forth in the complaint" amount to a denial of equal protection of the laws and due process of law.

What counsel fails to disclose to the Court is the fact that on October 15, 1947, Farmer Bros. dismissed their complaint *with prejudice.* Therefore, when the Supreme Court of California decided the *Lillefloren*

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case on February 5, 1948, petitioner Farmer Bros. had no interest whatever to protect under the allegations of their complaint.

---

## I.

### NO CONSTITUTIONAL POINT CAN BE RAISED HERE SINCE NO CONSTITUTIONAL ISSUE WAS EVER PRESENTED TO THE COURTS OF THE STATE OF CALIFORNIA.

A careful examination of the record in this case, both in its initial stage before the Superior Court, the trial Court, and before the Supreme Court of California, discloses that the petitioner never presented any constitutional issue to the Courts of California.

In the Points and Authorities presented by petitioner and plaintiff Farmer Bros. to the Superior Court on the request for a temporary restraining order and preliminary injunction it was not claimed that any constitutional right of plaintiff was being infringed.

When we come to the briefs filed by respondent Farmer Bros., we find that respondent's brief in the Supreme Court of California, filed January 6, 1947, contains this topical index of the legal argument:

> "I. The conviction and commitment of the petitioners, and each of them, violates no constitutional right.
>
> "II. The acts committed by the petitioners are acts denounced by the so-called 'Hot Cargo' and

'Secondary Boycott' law of the State of California.

"III. The commitments are valid."

It will be noted that constitutional rights referred to there are the constitutional rights of defendants, including *Lillefloren* who is the subject of the proceeding now before this Honorable Supreme Court.

Similarly, the Reply Brief of respondents (filed in the Supreme Court of California February 17, 1947) contains this topical index of the legal argument:

"Point I. Peaceful picketing.

"Point II. The restraining order was kept in force by appropriate minute orders after the defendants had appeared and asked for continuances.

"Point III. The restraining order as issued by the Superior Court is clear and could be understood by any person of ordinary intelligence; it was not ambiguous.

"Point IV. The court had jurisdiction. The affidavit on which the order to show cause in re contempt was issued, was sufficient,"

and then finally "Conclusion." Throughout this brief there is no mention of any constitutional rights of Farmer Bros, or, of course, of the Superior Court, claimed to be infringed.

Incidentally, in the Response of Farmer Bros. Co., entitled "Objections to Granting Review, Authorities in support of Judgment" (filed in the Supreme Court

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of California October 7, 1946) we find no index of legal argument, since the argument consists entirely of the opinion of a judge of the Superior Court who found *Lillefloren* guilty of contempt, and this document contains no specifications of any constitutional rights of Farmer Bros., alleged to be infringed or abridged.

Up to this point it might be argued that there had been no occasion for the specification of constitutional rights of Farmer Bros. alleged to be infringed since up to that point Farmer Bros. had been on the winning side, and the only constitutional rights shown to have been infringed were the constitutional rights of *Lillefloren* and his companions who had been deprived of their constitutional right of free speech. Now, however, we come to the point where the Supreme Court of California granted the writ of review asked for by *Lillefloren* and his associates, and at this point, if ever, there should appear a claim on behalf of Farmer Bros. that some constitutional right had been abridged; similarly, this was the occasion for the Superior Court to assert infringement or abridgement of any of its constitutional rights. The topical index of this particular argument is as follows:

> "I. The Hot Cargo Secondary Boycott Law is not so vague and indefinite as to warrant its being held invalid;
>
> "II. The Blaney decision should be reconsidered in the light of the Petrillo decision;
>
> "III. The separability clause should save this legislation;

"IV. Under the rules of equity the injunction was good, the acts complained of were all done to coerce the employer to commit an unlafwul act."

The above statement does not claim that Farmer Bros. enjoys or has any constitutional rights in the premises. The Supreme Court of California has held that there is no constitutional right of an employer to conduct his business on a non-union basis, and this is the only right which Farmer Bros. could urge as a constitutional right. (See *Smith Metropolitan Market v. Lyons,* 16 Cal. (2d) 389, at 402, 403 [106 P. (2d) 414-422, column 1]; see also *McKay v. Retail Automobile Salesmen,* 16 Cal. (2d) 311-222 [106 P. (2d) 373, 379, column 2].)

It is essential to jurisdiction of the Supreme Court on appeal that there be an explicit and timely insistence in the State Court that a state statute as applied is repugnant to the Federal Constitution and laws; and a federal question will not be considered when not raised in the State Court or considered there.

*Charleston Federal Sav. & Loan Ass'n v. Aldersen,* 65 S.Ct. 624, 324 U.S. 182;

*Wall v. Chesapeake & Ohio Ry. Co.,* 256 U.S. 125, 41 S.Ct. 402;

*Memphis Natural Gas Co. v. Beeler,* 315 U.S. 649, 62 S.Ct. 857;

*New York v. Graves,* 300 U.S. 308, 57 S.Ct. 466;

*C. I. O. v. McAdory,* 325 U.S. 472, 65 S.Ct. 1395;

*State Farm etc. Ins. Co. v. Duel,* 324 U.S. 154, 65 S.Ct. 573;

*Mabee v. White Plains Pub. Co.,* 327 U.S. 178, 66 S.Ct. 511;

*McCullough v. Kammerer Corporation,* 323 U.S. 327, 65 S.Ct. 297, 108 A.L.R. 721.

Before this Court can act, the Court must see plainly that the decision was either directly made of some matter within the purview of the act relating to the court's appellate jurisdiction or that the decision could not have been what it was without necessarily involving such matter.

*Honeyman v. Hana,* 300 U.S. 14, 57 S.Ct. 350.

While the Supreme Court of the United States has the ultimate power to explore the record for facts in constitutional controversies, it is accustomed to accept the result of the state Court's examination. The findings of the state Courts or the undisputed facts themselves ordinarily furnish the basis for the Supreme Court's appraisal of claimed violations of federal constitutional rights.

*Pennekamp v. Florida,* 328 U.S. 331, 66 S.Ct. 1029.

See, also:

*Capital Nat'l Bank v. First Nat'l Bank,* 173 U.S. 425, 19 S.Ct. 202;

*Green Bay & M. Canal Co. v. Patten Paper Co.,* 172 U.S. 58, 19 S.Ct. 97.

## II.

### PETITIONERS HAVE PRESENTED NO JUSTICIABLE CONSTITUTIONAL ISSUE TO THIS COURT.

In the brief in support of the petition for *writ of certiorari* filed herein by the petitioner, there appears at page 11 the following so-called "Specifications of Errors to Be Urged". These specifications are two in number and are as follows:

> "1. In holding that the so-called 'hot cargo and secondary boycott law' was so uncertain that it violated due process of law as protected by the Fourteenth Amendment to the Constitution and that it was unconstitutional for the reason that it abridged the right of free speech as guaranteed by the First Amendment to the Constitution.
>
> "2. In refusing to grant relief to the petitioners in interest under the facts set forth in the complaint, the Supreme Court deprived the petitioners in interest of the equal protection of the law and it amounted to a denial of due process of law in violation of the Fourteenth Amendment to the Constitution."

It will be noted that the only reference in the first specification above to constitutional rights is the reference to the constitutional rights of the members of the Union, including *Lillefloren,* to the right of free speech and freedom of assembly, and the above specification amounts to no more than a complaint that the Supreme Court of California protected these particular rights. No mention is made of any right of Farmer Bros. which was infringed by this protection of the constitutional right of the defendants.

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Now, the second so-called specification of error discloses and betrays the untenable position of petitioners before this Court. Petitioners claim that the Supreme Court of California erred in refusing to grant relief "under the facts set forth in the complaint". This relief sought by Farmer Bros. in their complaint might conceivably be granted after a trial of the issues in the Superior Court, or the relief might be denied by the Superior Court, and should this denial be upheld by the Supreme Court of California on appeal, petitioners would than have had a final judgment by which any constitutional rights of theirs (they mention no such rights) would have been finally abridged, infringed or denied, and there would then be a situation in which they might argue their right to relief before this Supreme Court. However, a trial of the issues has been foreclosed and forever prevented by the dismissal, *with* prejudice, of Farmer Bros.' complaint on October 19 of record herein.

---

## III.

**THE UNITED STATES SUPREME COURT WILL NOT REVIEW A STATE COURT DECISION WHICH RESTS UPON NON-FEDERAL GROUNDS EVEN THOUGH A FEDERAL QUESTION IS ALSO INVOLVED.**

In the case at bar, the California Supreme Court did not, in our opinion, decide a federal question. The Court said "The temporary restraining order follows closely the language of the Hot Cargo Act (Lab. Code, secs. 1131-1136) which was considered and found in-

valid in *In re Blaney,* 30 Cal. (2d) 643 [184 P. (2d) 892]," and the Court says:

> "The additional contention is made that the defendants and petitioners were engaging in their labor activity for an unlawful purpose, namely, to compel the employer-plaintiff to sign a closed shop contract when it was engaged in inter state commerce, and defendants do not represent a majority of plaintiff's employees; that they were making a demand which would be unlawful under the National Labor Relations Act. (Citations.) But here, the *restraining order* did not forbid the making of such demand or engaging in the labor activity for such purpose."
>
> *Lillefloren v. Superior Court,* 31 Cal. (2d) 439.

There is no discussion of a federal or constitutional question in this opinion. The Court refers to "the temporary restraining order" which "follows the language" of the Hot Cargo Act. The California Supreme Court, in the *Blaney* case, found the *restraining order itself* objectionable in addition to deciding the Hot Cargo Act unconstitutional.

The provisions of the restraining order are set forth in full in the *Blaney* decision and it is apparent that two questions were decided in the *Blaney* case: (1) That the injunction was too vague, indefinite and uncertain; and (2) that the "Hot Cargo Act" was unconstitutional. The Court said, "It [the Hot Cargo Act] and the restraining order issued pursuant to it are too sweeping, vague and uncertain." (30 Cal. (2d) 643 (at 650).) In the case at bar, a reading of

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the decision seems to indicate decision on only one point, the character of the restraining order.

However, if we assume that the decision of the state Court actually covered both points, we then have a situation where the state Court decided two points, one involving a federal question, the other a non-federal point as to the character of the restraining order.

The second was ample authority to sustain the decision of and by itself.

Where two legal questions are considered, one of which involves a federal question and the other does not involve a federal question, with the highest Court of the state sustaining both of them and giving judgment for the defendant, the Supreme Court of the United States will affirm the state judgment without considering the federal question, even though it may have been erroneously decided. This court has often refused jurisdiction where the decision did or could rest on adequate state ground.

*Hale v. Akers,* 132 U.S. 554, 10 S.Ct. 171 (33 L.Ed. 442);

*Flournoy v. Wiener,* 321 U.S. 253;

*Minn. v. National Tea Co.,* 309 U.S. 551.

## IV.

### THE UNITED STATES SUPREME COURT WILL NOT DISTURB THE CONSTRUCTION PLACED ON A STATE STATUTE BY THE HIGHEST COURT OF A STATE.

The assignment of error in the petition for writ of certiorari contains only one count which could be possible cause for reversal by this Court; namely, that the Supreme Court of the State of California wrongly decided that the state "Hot Cargo Act" under which the injunction was issued is "vague, indefinite and uncertain". This Court has said that it confines itself on certiorari to the ground upon which the writ is asked for and granted.

*Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587, 609.

In the petition appellants state their contention in this language: "The Supreme Court of California erred in holding that the so-called 'Hot Cargo Act' was indefinite and uncertain." In effect, they ask this Court to overrule the construction placed upon this statute by the highest Court of the state—to declare the statute to be sufficiently definite and certain to stand constitutional challenge. It must be remembered, first, that this case went up on contempt. The main case was never tried on the merits, and since petitioner has dismissed the case with prejudice, it can never be tried on the merits; and the Supreme Court of California, contrary to appellant's statements in his petition, never passed upon the injunction or the right of appellants to injunctive relief. Nor did the Supreme Court of California deny appellants

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injunctive relief of any kind nor "equal protection of the law" in any manner. *These issues never came before the Court.*

If for no other reason than failure to give adequate information and essential facts in the petition or to state the case as actually presented to the Court below, the writ should be dismissed.

*Fox Film Corp. v. Muller,* 296 U.S. 207;
*Broad River Power Co. v. South Carolina,* 281 U.S. 537.

The statements of the decision taken in context show clearly that the Supreme Court of California condemned the restraining order as well as the statute in both the *Blaney* case and the case at bar. The Court said, "a statute so broadly and loosely drawn, which places it within the power of a Court *to grant injunctive relief* which by its terms may be used to strike down the right to freedom of speech, is a prior restraint upon that right and falls squarely within the rule recently declared by this court." (Citing, *In re Bell,* 19 Cal. (2d) 488 [122 P. (2d) 22]. Emphasis ours.)

At another point the Court said, "it [referring to the statute] and the *restraining order issued pursuant to it* is too sweeping, vague and uncertain." Again the Court said, "Language prohibiting conduct that may be prohibited and conduct that may not, affords no reasonable, ascertainable standard of guilt and is therefore too uncertain and vague to be enforced". At another point, "It is a coercive measure and a person does not know in advance whether its application to

his conduct will be constitutional or unconstitutional. He should not be required at his peril to make that determination".

The Court also points out that the vague, indefinite and uncertain character of the restraining order and this statute would lead to the result that "those individuals who *guess* correctly will be released by the Courts, and those who *guess* incorrectly will be punished".

This Court has said that "The office of interpretation is to bring sense out of words used, and not to bring sense into them". (*Smiley v. Kansas,* 196 U.S. 447, 25 S.Ct. 289.) This was found to be an impossible task with respect to this statute and it is our contention that under the decisions of the United States Supreme Court this Court will not attempt to "second guess" the decision of the highest state Court on this point of construction and fact.

The contempt charge was based solely upon the provisions of the vague and indefinite restraining order. The restraining order was in turn based upon the vague and indefinite provisions of the Hot Cargo Act. This shows conclusively that the finding of the California Supreme Court as to the vague and indefinite character of the act was neither arbitrary nor capricious but founded upon ample facts and ably considered by standard legal tests as the decision itself will disclose.

However, back to the point that this Court will not substitute its judgment for that of the highest

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state Court in the matter of construction, we cite the following decisions:

*McKay Telegraph Company v. Little Rock,* 250 U.S. 74.

This Court refers to the construction of an ordinance of the City of Little Rock, Arkansas, placed upon said ordinance by the Supreme Court of Arkansas in this language:

> "The Supreme Court of the State, as we read its opinion, dealt with the poll fees tax not as an agreed compensation but as a license tax. Consequently, we will—*indeed must, for present purposes,* so regard it." (Emphasis ours.)

To the same effect is,

*Hendrickson v. Apperson,* 245 U.S. 105.

This Court has held that construction by the state Court of a statute is controlling where the question involved is whether the statute is repugnant to the Federal Constitution—the very question in the case at bar.

*Morehead v. New York,* 298 U.S. 587, supra;
*American Mfg. Co. v. St. Louis,* 250 U.S. 459.

This Court also had before it a very similar construction of statute in a New York case. (*Morehead v. New York ex rel Tipaldo,* 298 U.S. 587.) In that case, as in the case at bar, the highest state Court first construed the statute under consideration and then decided that under that construction the Act violated the Fourteenth Amendment. This Court reiterated the principle that the construction of the

Supreme Court of the state was controlling. In that case, as in the case at bar, it was contended that the state court erred in its construction of the statute. (See *Aero Mayflower Co. v. Bd. of R.R. Com'rs*, 68 S.Ct. 167 (Dec. 8, 1947).)

In answering this contention, this Court said:

> "Petitioner's contention that the Court of Appeals *misconstrued the act* cannot be entertained. *This court is without power to put a different construction upon the state enactment from that adopted* by the highest court of the state. We are *not at liberty* to consider petitioner's argument based upon the construction repudiated by that court. The *meaning* of this statute as fixed by its decision must be *accepted* here as if the *meaning* had been specifically expressed in the enactment." (Emphasis ours.)
>
> *Morehead v. N. Y.ex rel. Tipaldo*, 298 U.S. 587, 609.

This Court then went on to consider whether the act *as construed by the state Court* violated the Fourteenth Amendment.

In

*Pacific Live Stock Co. v. Oregon Water Board*, 241 U.S. 440,

this Court again accepted the construction of a state statute of Oregon as conclusive. In numerous other cases this has been announced in varying forms. As stated previously, it has been applied where the state Court decided the question as to whether a statute conflicted with the Constitution of the United States

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and also to the question as to whether the statute violated state constitutional provisions.

*Jefferson Branch Bank v. Skelly,* 1 Black U.S. 436.

In *Smiley v. Kansas,* 196 U.S. 447, this Court said:

"It is well settled that in cases of this kind, the interpretation placed by the highest court of the state upon its statutes is controlling here. We *accept the construction given* to a state statute by that court." (Citing *St. L. I. M. & St. P. Ry. Co. v. Paul,* 173 U.S. 404, 408; *M. K. & T. Ry. Co. v. McCann,* 174 U.S. 580, 586; *Tullis v. L. E. & W. Railroad Co.,* 175 U.S. 348.)

This Court went further in this statement:

"Nor is it material that the state court ascertains the *meaning and scope of the statute* as well as its *validity* by pursuing a different rule of construction from what we recognize. It may be that the views of the Kansas Court in respect to this matter are not in harmony with those expressed by us. (Citing cases.) We shall not stop to consider that question * * *"

"The power to determine the meaning of a statute carries with it the power to *prescribe its extent and limitations* as well as *the method by which they shall be* determined." (Emphasis ours.)

The mere fact that this Court might disagree with the decision of the state Court that this statute is "vague, indefinite and uncertain" or would not have made the same decision is not enough to overrule that

decision on a doubtful point (*Milwaukee Electric R. & Light Co. v. Wisconsin*, 252 U.S. 1000) and certiorari will not be granted to review action of a lower Court on which its decision is final.

*American Steel Foundries v. Whitehead*, 256 U.S. 40;
*Baldwin Co. v. R. S. Howard Co.*, 256 U.S. 35;
*U.S. v. Rimer*, 220 U.S. 547.

We believe under these decisions that the only review possible, assuming that this Court will review a decision in which the defendants were discharged in a contempt case and in which the highest state Court decided the case on a point not involving the federal question, is whether a statute which has been declared vague, indefinite and uncertain by the California Supreme Court violates the Federal Constitution. We do not find this point clearly raised in the petition for the Writ. However, it seems to us elementary that such a statute cannot stand.

Definiteness in a statute, especially those coercive or criminal in character, is the first necessary element of validity. It has been said that "A statute which either forbids or requires the doing of an act in terms so vague that men of *common intelligence* must necessarily guess at its meaning and *differ as to its application* violates the first essential of due process of law." (*Am. Jur. Constitutional Law*, Para. 585, p. 282.) (Emphasis ours.) Citing

*Yu Cong. Eng. v. Trinidad*, 271 U.S. 500;
*Connelly v. General Cons. Co.*, 269 U.S. 385;

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*Joseph Triner Coys v. McNeil,* 363 Ill. 559, 2 N.E. (2d) 929;
*Vallat v. Radium Dial Co.* (360 Ill. 407), 196 N.E. 485, 104 A.L.R. 1435.

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## V.

**THE DECISION OF THE SUPREME COURT OF CALIFORNIA IN THE LILLEFLOREN CASE, WHICH FURNISHED THE OCCASION FOR THE CERTIORARI PROCEEDINGS AT BAR, INVOLVED QUESTIONS OF CALIFORNIA LAW. THE RULE IN CALIFORNIA REGARDING THE RIGHT OF PEACEFUL BOYCOTT AND PEACEFUL PICKETING HAS DEVELOPED AN INDIVIDUAL AND DISTINCT RULE, AND THE LILLEFLOREN DECISION CONFORMED TO THIS PARTICULAR RULE.**

California was one of the first states where the right of boycott and picketing was even discussed as being within the constitutional guarantees. This question arose in California as far back as 1905 in the case of *Jordahl v. Hayda,* 1 Cal. App. 696 [82 P. 1079], where the picketing was conducted under circumstances of great violence and was prohibited on that ground. The District Court of Appeal (on page 699 of the decision), referred to Section 1 of Article I of the Constitution of California as follows:

> "While the right of free speech is guaranteed to all citizens by the constitution, there is also guaranteed to them by the same constitution the right of 'acquiring, possessing and protecting property; and possessing and obtaining safety and happiness' (art. I, sec. 1); and it is a maxim of jurisprudence prescribed by the statute law of

> this state that 'one must so use his rights as not to infringe upon the rights of another'. (Civ. Code, sec. 3514.) These guaranties are equally important to and equally necessary for the protection of all classes of citizens."

And on page 700 the Court said:

> "We do not understand that the trial court decided that carrying a banner, such as was carried in this instance, in the street in front of plaintiff's restaurant, was unlawful or that the judgment necessarily rested on such acts, and no question involving such acts is before us. The judgment enjoins defendants 'from stationing themselves in the doorway of said restaurant or upon the sidewalk in front of the same and there interfering with the business of plaintiff by intimidation, insults, or threats to his patrons, thereby inducing persons not to patronize the restaurant of said plaintiff; and said defendants, * * * are hereby especially enjoined from in any manner interfering with the said business of plaintiff by means of threats or intimidation of any kind or nature, directed against the patrons or customers * * * of said plaintiff and from interfering by means of threats or intimidation with any person that may be working for plaintiff or may desire to work for him in his said restaurant'."

In a long line of cases the higher Courts of California have upheld the right of free speech, free press and freedom of assemblage in cases involving similar situations to that in the case at bar, with specific

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reference to the provisions of the Constitution of California, particularly Sections 9 and 10 of Article I:

*In re Lyons,* 27 Cal. App. (2d) 293;

*People v. Young,* 136 Cal. App. 699, 702;

*People v. Mintz,* 106 Cal. App. 725, 731;

*In re Blaney,* 30 Cal. (2d) 643;

*Chrisman v. Culinary Workers' Local,* 49 Cal. App. (2d) 129, 132

(where the California rule as to peaceful picketing was upheld but without specific mention of the California constitutional provisions);

*In re Fortenbury,* 38 Cal. App. (2d) 284, 291

(the District Court of Appeal, at the page cited, referred to the issues as revolving around Sections 9 and 13 of Article I of the Constitution of California as well as the Fourteenth Amendment. The decision of the District Court of Appeal, refusing to uphold the right of secondary boycott under the facts there existent (which are also the facts in the case at bar, to wit, secondary boycott) was disapproved by the Supreme Court of California in 16 Cal. (2d) 405);

*In re Bell,* 37 Cal. App. (2d) 582

(peaceful picketing approved, but picketing by violence disapproved);

*People v. Taylor,* 33 Cal. App. (2d) Supp. 760, 761.

As pointed out above, the right of peaceful boycott and peaceful picketing were upheld and protected by the Supreme Court of California on general grounds down to the decisions in the *McKay* and allied cases in October, 1940. (16 Cal. (2d) 311 [106 P. (2d) 373].)

The decision of the Supreme Court of California in the *Lillefloren* case, handed down February 5, 1948, *and reported at 31 Cal. (2d) 439 [189 P. (2d) 265]*, stated in the second paragraph of the decision as follows:

> "The temporary restraining order follows closely the language of the Hot Cargo Act (Lab. Code, secs. 1131-1136) which was considered and found invalid in *In re Blaney*, 30 A.C. 648 [30 Cal. (2d) 643]."

The so-called "Hot Cargo and Secondary Boycott" Act, secs. 1131 to 1136, inclusive, of the Labor Code was "added by Stats. 1941". (Ch. 623, Sec. 1, p. 2079.) In litigation involving this particular statute it was frequently stated by those seeking to uphold its constitutionality that it was passed pursuant to the language of the Supreme Court of California in the case of *McKay v. Retail Auto. Salesmen*, 16 Cal. (2d) 311 [106 P. (2d) 373], at 331. The majority opinion used this language:

> "The public ultimately pays the full cost of every labor dispute and better labor relations must be established. But if they cannot be brought about by enlightened self-interest the remedy lies with the legislature—not in the courts—in so far as contests peaceably conducted for a purpose legitimately connected with the welfare of labor as a whole is concerned."

The Supreme Court of California in the *McKay* case, just referred to, decided that peaceful picketing by a labor union pursuant to a dispute with an em-

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ployer reasonably relevant to employment relations and the purposes of collective bargaining is a constitutional right. The Court, at the end of the majority opinion, uses the language above cited with reference to the functions of the legislature in the regulation of labor disputes. In many pieces of litigation arising out of the attempted enforcement of the so-called Hot Cargo Act in the Superior Courts of California it was repeatedly asserted and argued that while the Supreme Court of California had upheld the right of peaceful boycott and peaceful picketing as a constitutional right, the Court had invited and suggested recourse to the State Legislature for the regulation and abridgment of this right.

These general statements of Courts to the general effect that a state has a right to regulate the abuse of the right of peaceful picketing and peaceful boycott do not solve the problem before us. The right of a state, either through its legislative, judicial or executive branch, to regulate the conduct of the people does not extend to abridgment of the right of free speech. Section 9 of Article I of the Constitution of California provides that "every citizen may freely speak, write and publish his sentiments on all subjects a citizen being responsible only for the abuse of that right, and no law shall be passed to abridge the liberty of speech or of the press".

And Section 10 of Article I of the Constitution of California is as follows:

> "The people shall have the right to freely assemble together to consult for the common good,

to instruct their representatives, and to petition the Legislature for redress of grievances."

An examination of the opinion of the Supreme Court of California in the *McKay* case discloses that the opinion reaffirmed and rested upon the decision of the Supreme Court of California in *Parkinson Co. v. Building Trades Council* (decided in December, 1908), 154 Cal. 581 [98 P. 1027, 21 L.R.A. New Series 550, 16 Annotated Cases 1165], upholding a peaceful primary and secondary boycott.

The next year in the case of *Pierce v. Stablemen's Union* (decided July 6, 1909), reported at 156 Cal. 70 [103 P. 324], the Supreme Court of California again upheld the right of peaceful boycott, stating that the Court recognized no difference between the primary and the secondary boycott. (See pages 75 to 79, inclusive.) That decision handed down forty years ago referred to the rule adopted in many jurisdictions which disapproved of the right of peaceful boycott, but the Court frankly adopted what at that time was the minority rule and held that a peaceful boycott is lawful. The language that the Court referred to was as follows:

> "After striking, the employees may engage in a boycott, as that word is here employed. As here employed it means not only the right to the concerted withdrawal of social and business intercourse, but the right by all legitimate means—of fair publication, and fair oral or written persuasion, to induce others interested in or sympathetic with their cause, to withdraw their social inter-

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course and business patronage from the employer. They may go even further than this, and request of another that he withdraw his patronage from the employer, and may use the *moral* intimidation and coercion of threatening a like boycott against him if he refuse so to do. This last proposition necessarily involves the bringing into a labor dispute between A and B, C, who has no difference with either. It contemplates that C, upon the request of B, and under the moral intimidation lest B boycott him, may thus be constrained to withdraw his patronage from A, with whom he has no controversy. This is the 'secondary boycott', the legality of which is vigorously denied by the English courts, the federal courts, and by the courts of many of the states of this nation. Without presenting the authorities, which are multitudinous, suffice it to state the other view in language of the President of the United States but recently uttered: 'A body of workmen are dissatisfied with the terms of their employment. They seek to compel their employer to come to their terms by striking. They legally do so. The loss and inconvenience he suffers he cannot complain of. But when they seek to compel third persons, who have no quarrel with their employer, to withdraw from all association with him by threats that unless such third persons do so the workmen will inflict similar injury on such third persons, the combination is oppressive, involves duress, and if injury results, it is actionable.' (President Taft, *McClure's Magazine,* June, 1909, p. 204.) Notwithstanding the great dignity which attaches to an utterance such as this, which, as has been said, is but the expression of numerous courts upon the

subject-matter, this court, after great deliberation, took what it believed to be the truer and more advanced ground above indicated and fully set forth in *Parkinson v. Building Trades Council etc.*, 154 Cal. 581 [98 P. 1027]. In this respect this court recognizes no substantial distinction between the so-called primary and secondary boycott. Each rests upon the right of the union to withraw its patronage from its employer and to induce by fair means any and all other persons to do the same and in exercise of those means, as the unions would have the unquestioned right to withhold their patronage from a third person who continued to deal with their employer, so they have the unquestioned right to notify such third person that they will withdraw their patronage if he continues so to deal."

This decision was followed the next year in the case of *Union Labor Hospital Assoc. v. Vance Redwood Lumber Company,* 158 Cal. 551, again upholding the right of peaceful boycott regardless of the damage which might accrue therefrom.

In January of 1935 the Supreme Court of California in *Lisse v. Local Union,* 2 Cal. (2d) 312 [41 P. (2d) 314], reaffirmed these former decisions and referred to peaceful picketing as being lawful in California, the only test as between lawfulness and unlawfulness being explained at page 321 as turning on the question of peaceful persuasion as against use of physical force. This line of decisions was affirmed in the *McKay* case, above cited, and the companion cases decided on the same day of *Shafer v. Registered Pharmacists,* 16 Cal.

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(2d) 379 [106 P. (2d) 403]; *Lund v. Auto. Mechanics,* 16 Cal. (2d) 374; *Smith Metropolitan Market v. Lyons,* 16 Cal. (2d) 389 [106 P. (2d) 414], and *Fortenbury v. Superior Court,* 16 Cal. (2d) 405 [106 P. (2d) 411].

The *McKay* and companion cases upholding the constitutional right of picketing and primary and secondary boycott have been upheld and reaffirmed in subsequent decisions of the California Supreme Court:

*In re Bell,* 19 Cal. (2d) 488, 497 [122 P. (2d) 22]

(where the Court took into consideration the fact that the picketing might cause some inconvenience and disturbance of traffic);

*Steiner v. Long Beach Local,* 19 Cal. (2d) 676, 681, 682

(where the right to picket was suspended during an era of extreme violence, but the constitutional right was upheld (p. 682));

*Magill Bros. v. Bldg. Service Employees,* 20 Cal. (2d) 506, 511 [127 P. (2d) 542]

(where, it appearing that unlawful statements had been made on the picket line, the making of such unlawful statements was prohibited without interfering with the right of picketing);

*Emde v. San Joaquin County Labor Council,* 23 Cal. (2d) 146, 154, 155

(where the boycott was expressed, in part, by publications in the official labor paper);

*James v. Marinship,* 25 Cal. (2d) 721, [155 P. (2d) 329, 160 A.L.R. 900]

(where the right was reaffirmed, but it was held not to authorize or support the right of the union to deprive qualified Negro craftsmen of their rights solely because of their race and color (pp. 728, 729));

*Park & Tilford v. Teamsters,* 27 Cal. (2d) 599 [165 P. (2d) 891, 162 A.L.R. 1426]

(where the California rule was upheld to the effect that even though a portion of the objective of the union might be unlawful, the right of picketing for the lawful portion of the objective could not be abridged (pp. 606, 607, 608));

*In re Porterfield,* 28 Cal. (2d) 91, 114 [168 P. (2d) 706, 167 A.L.R. 675]

(where these rights were upheld in connection with the right of organization and assemblage);

*Northwestern Pacific v. Lumber and Sawmill Workers,* 31 Cal. (2d) 44 [189 P. (2d) 277]

(where the right of picketing was denied because of violence and threats of violence, but where the California rule of the right to picket for a lawful and necessary objective was distinguished and upheld even though a portion of the objective might be unlawful (pp. 445-448)).

And, the latest and the most recent decision on this subject, handed down November 1, 1948, is

*Hughes v. Superior Court,* 32 A.C. 896, 901

(where the right of picketing was denied *in a non-labor union dispute* in support of what the Court conceived to be enforced discrimination in favor of persons of the Negro race against persons of the white race).

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Of course, included in the line of cases are the *Blaney* and *Lillefloren* decisions. The *Blaney* case involved facts similar to those in the *Lillefloren* case at bar, that is, picketing of the product or property of a struck employer at premises other than the plant or office of the employer. This operation is sometimes referred to as a "secondary boycott," although, strictly speaking, it is not such, since it does not involve action against *any person* other than the employer; it merely involves the picketing of the product or property of the alleged unfair employer—similar to the situation in *Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U.S. 287, and *Bakery Wagon Drivers v. Wohl*, 315 U.S. 769; affirmed in *Carpenters and Joiners v. Ritter's Cafe*, 315 U.S. 722.

However, the Supreme Court of California, under this long established rule, uses the broad term "secondary boycott" to describe such activities as well as a personal boycott of an individual dealing with a struck employer under the definition of secondary boycott found in *Pierce v. Stablemen's Union, supra*, decided in 1909, 156 Cal. 70, 76, 77.

The Supreme Court of California has dealt in its own way and following its own precedents with the question of "conscripting neutrals". In a case which involved a situation completely analogous to the facts in the *Lillefloren* case, namely, the picketing of products or supplies of a struck or boycotted employer, the Supreme Court of California in the case of *In re Fortenbury*, 16 Cal. (2d) 405, has this to say (at page

407) with regard to a party dealing with such struck or boycotted employer:

> "Although the respondent argues that a person secondarily boycotted is an innocent third party caught between the upper and lower millstones of an industrial dispute in which he has no interest, this is clearly not correct. One who sells a product of a merchant or manufacturer engaged in a labor dispute with his employees, inescapably becomes an ally of the employer. He has a direct unity of interest with the one against whom labor's complaint is directed. By providing an outlet for that product, he enables the employer to maintain the working conditions against which labor is protesting. And unless the union is allowed to follow the product to the place where it is sold and to ask the public by peaceful representations to refrain from purchasing it, the workers have no opportunity to tell their story to those whose interest or lack of interest will, in large measure, determine the issues in dispute. (*Goldfinger v. Feintuch,* 276 N.Y. 281 [11 N.E. (2d) 910, 116 A.L.R. 477].)
>
> "Obviously, the establishment where a product is sold is the only effective point where the consumer may be told the facts concerning a labor controversy."

It will be noted that this language used by the Supreme Court in October 1940 fits in exactly with the ruling of that court in 1909 where, in the case of *Pierce v. Stablemen's Union,* 156 Cal. 70, 76, the Supreme Court used the language quoted previously.

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We thus have the rule, upheld by the Supreme Court of California for forty years without any deviation whatever (except possibly to make the rule stronger), first, that a primary boycott is lawful so long as it is peaceful, second, that a secondary boycott is lawful so long as it is peaceful, and third, that the secondary boycott does not involve interference with "neutrals" since those who deal with a struck employer are not, in fact, neutral in the labor dispute and that peaceful economic action against them to induce the temporary suspension of their business with the struck employer is not conscripting a neutral but is merely carrying on peaceful and legitimate activity within the real area of economic interdependence, that is to say, within the industry.

This rule, steadfastly upheld by the Supreme Court of California, is not in conflict with the rule of this Court. The decisions of the Supreme Court of California in the *McKay* and *Fortenbury* cases were handed down October 16, 1940. On March 30, 1942, this Court in *Carpenters and Joiners v. Ritter's Cafe,* 315 U.S. 722 [86 L. Ed. 1143], at pages 727-728, referred to the "restriction of picketing to the area of the industry within which a labor dispute arises" and states in effect that an extension of picketing beyond the area of the industry would be "to conscript neutrals having no relation to either a dispute or the industry in which it arose." This language has been frequently quoted in arguments opposing the right of secondary boycott, but it is clear that the language does not refer to such a situation as the one at bar.

In the case at bar the picketing which is objected to was the picketing of property, to wit, coffee, belonging to Farmer Bros., the employer in the dispute, which was ready for transportation to the Farmer Bros. main plant. The picketing was, therefore, clearly within the industry and within the area of the economic dispute. In the *Ritter's Cafe* case, the Court (at page 727 of the opinion) expressly reaffirmed the decision that was rendered in *Bakery and Pastry Drivers v. Wohl,* 315 U.S. 769, 62 S. Ct. 816 [86 L. Ed. 1178], which was the identical type of picketing involved in the case at bar, and, incidentally, the type of picketing referred to by the Supreme Court of California in the *Fortenbury* case, referred to above. It is clear, therefore, that this Court, in speaking of the conscription of neutrals in the *Ritter's Cafe* case, had in mind the facts in that case, namely, the picketing of a fully unionized cafe in connection with a dispute between a building contractor and building mechanics—carpenters and painters.

In a footnote to the *Ritter's Cafe* decision appears a reference to *Teller* on *Labor Disputes,* Vol. I, Section 123. With regard to this citation, we should remember, first, that Mr. Teller's book went to press in 1940 and was therefore written somewhat before that time. The first sentence of Section 123 is as follows:

> "The legality of the secondary picket has been denied wherever the question has arisen."

A glance at the authorities cited to support this statement (under Note 90) discloses a very interesting situation.

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Several California trial Court decisions handed down in 1938 and 1939 are cited against the right of secondary boycott. However, as pointed out above, the Supreme Court of California in October 1940 upheld the secondary picket line in the *Fortenbury* case, which is one of the companion cases in which the right of peaceful picketing was upheld as a constitutional right.

The Colorado decision of *Perry Truck Lines v. Brotherhood of Teamsters* (decided in 1939 and referred to also in Note 90) was reversed by the Supreme Court of Colorado (101 P. (2d) 436, 5 LRR Man. 930). The decision of the Supreme Court of Illinois in the *Meadowmoor Dairies* cases is also cited, but, as pointed out herein, that ruling was reversed by this Court in *Milk Wagon Drivers v. Meadowmoor Dairies,* 312 U.S. 287, 61 S. Ct. 552 [85 L. Ed. 836, 132 A.L.R. 1200], in which this Court held that picketing by striking dairy drivers of the customers of the dairies with whom they were in dispute, was proper and a constitutional right so long as the picketing was peaceful, and that the suspension of the right during a period of extreme violence (and while a renewal of the violence was imminent) was only temporary and that the restriction should be lifted the moment the imminence of the danger should cease.

Petitioner in this case argues that the Superior Court had a right to enjoin all picketing because of a previous unlawful demand. The Supreme Court of California in the *Lilleflorен* case pointed out (at 31 Cal. (2d) 440) that "the restraining order did not

forbid the making of such demand or engaging in the labor activity for such purpose," and went on to point out the rule in California that an injunction should be limited to the unlawful act—in that particular case, the unlawful demand, if such there were.

It is the well settled rule in California that all picketing may not be prohibited because a portion of the objective is unlawful. This rule is completely at variance with that prevailing in other jurisdictions. As an example, we may take the recent case of *Fred Wolferman v. Root,* decided by the Supreme Court of Missouri September 8, 1947, and reported in 204 S.W. (2d) 733, where the Court referred to the rule prevailing in that jurisdiction and in many others as follows (at page 736):

> "Both the answer and the evidence do disclose that one of the purposes for the picketing is for giving information to the public. While we assume that purpose is lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See *Restatement Torts,* Sec. 796. *Cf. Baush Machine Tool Co. v. Hill,* 231 Mass. 30, 120 N. E. 188; *Folsom Engraving Co. v. McNeil,* 235 Mass. 269, 126 N. E. 479."

The Supreme Court of California, on the other hand, has held in the *Lilleforen* case at the page just cited, in *Park & Tilford v. Teamsters, supra* (at page 607), in *N. W. Pac. R. R. Co. v. Lumber & S. W. Union,* 31 Cal. (2d) 441 that picketing for an objec-

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tive, or a portion of an objective which is lawful, may not be prohibited because picketing for another objective or portion of an objective involved might be unlawful.

In addition to the basic and fundamental rules of California law, above referred to, there is another well established principle which is vital to the present issue and in which the rule in California may be at variance from the rule in some other jurisdictions. The rule in question is that there is no obligation on any one to obey a void injunction (*Fortenbury v. Superior Court,* 16 Cal. (2d) 405).

To the same effect:

*Kreling v. Superior Court,* 18 Cal. (2d) 884.

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## VI.

**THE RIGHT OF FREE SPEECH, SUBJECT ONLY TO THE CLEAR AND PRESENT DANGER RULE, HAS BEEN UPHELD BY THIS COURT FOR A QUARTER OF A CENTURY, AND THIS RIGHT HAS APPLIED TO PEACEFUL PICKETING FOR ALMOST A DECADE.**

In April 1940, this Court for the first time considered elaborately the right of peaceful picketing under the guarantee of the First and Fourteenth Amendments. Previously this Court had upheld this constitutional right in cases where peaceful picketing was involved. In *Senn v. Tile Layers,* 301 U.S. 468, 57 S. Ct. 857 [81 L. Ed. 1229], this language is used at page 478:

> "Members of a union might, without special statutory authorization by a state, make known

the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

This language has been cited in subsequent decisions.

Also in the decision on the consolidated cases reported under the name *Schneider v. State,* 308 U.S. 147, 60 S. Ct. 146 [89 L. Ed. 430], it appeared that four ordinances passed by cities in four different states abridging the right to distribute handbills were all held to be unconstitutional as infringing the rights secured by the First Amendment, also by the Fourteenth Amendment. One of these cases, *Snyder v. City of Milwaukee,* involved distribution of handbills by a picket. This Court impliedly upheld the constitutional right of picketing by invalidating that particular ordinance along with the others.

In *Thornhill v. Alabama,* 300 U.S. 88, 60 S. Ct. 736 [87 L. Ed. 1290], *supra,* however, the Court went into detail in discussing and upholding the constitutional right of peaceful picketing, and the discussion is directly applicable to the case at bar. The so-called findings in the case at bar (R., p. 146), which apparently involved a hearing or other consideration of the guilt of the defendants (although there was no hearing or consideration other than ex parte on the issuance of the temporary restraining order), the basis of the contempt charge (R., p. 108) showed that petitioner and others were engaged in picketing a certain shipment of coffee belonging to the petitioner Farmer Bros. (R., p. 109.) The finding of contempt (R., p. 149) goes into lurid detail as to all the acts and conversation of the various parties. There is no

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pretense of violence or the threat of violence, although it is clear that the purpose of the picketing was to persuade, if possible, employees having charge of the shipments not to deliver them. In other words, it is clear from this finding of contempt that petitioner was engaged in a boycott of shipments belonging to Farmer Bros., the employer in a labor dispute.

Incidentally, this is in direct conflict with the allegation of the complaint, on which petitioners rely, which alleges positively not even on information and belief that there is no boycott (R., p. 13, para. XVIII):

> "That now, and at all times herein mentioned, there existed and exists no strike and no lockout, and *no boycott*, either individually or in groups." (Emphasis added.)

Now let us return to the decision of this Court in *Thornhill v. Alabama*. We find that the violation there was not of an injunction but of a statute of the State of Alabama whose purport is set out in 310 U.S. at pages 91 and 92. There the prohibition runs against "any person or persons * * * who go near to or loiter about the premises * * * for the purpose, or with intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another."

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In the case at bar, it is not a statute which is alleged to have been violated, but a restraining order. In the case at bar, the defendants, including *Lillefloren*, were prohibited from "* * * combining or agreeing to cease performing or to cause any employee of [various companies] to cease performing any services for said employers, or any of them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for them, or causing or agreeing to cause any loss or injury to such employers, or any of them, for the purpose of inducing or compelling such employers, or any of them, to refrain from doing business with plaintiff * * *"

In the *Thornhill* case, the prohibition was against anybody influencing or inducing people not to do business with any particular concern. In the case at bar, the prohibition is against "ceasing to perform services or causing any employee to cease performing services, etc." In both the *Thornhill* case and the case at bar, the persuasion or influencing, in other words, the unlawful act in each case, consisted of picketing. In the *Thornhill* case this Court discussed the situation from a common sense, factual standpoint. At page 99, the Court said the purpose of the described activity was concededly to advise customers and prospective customers of the relationship existing between employer and his employees, and therefore to induce such customers not to patronize such employer, and at page 100 of the decision the Court used this language, "An intention to hinder, delay or interfere with a lawful business * * * can be proved merely

by showing that others reacted in a way normally expectable of some upon learning the facts of a dispute." And on page 104 this Court recognized that the picketing might have its anticipated result. The Court said:

> "It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society."

In the *Thornhill* case, this Court held the statute to be unconstitutional, a violation of the rights secured by the First and Fourteenth Amendments. In the case at bar, the Supreme Court of California released *Lillefloren* and his companions from punishment for violation of a similar abridgment of their constitutional rights.

In the *Thornhill* case, this court said (at pages 105-6):

> "Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion."

Now let us refer briefly to the development in the line of decisions of this Court of the right of free

speech subject only to the clear and present danger rule, referred to in the last citation.

Since the *Thornhill* case was the first case discussing elaborately this right of peaceful picketing there was no line of decisions on that subject which could be referred to as authority. However, at page 95 of the *Thornhill* opinion we have this line of cases referred to as authority:

*Schneider v. State,* 308 U.S. 147, 160, 60 S. Ct. 146, 150 [85 L. Ed. 430];

*Lovell v. City of Griffin,* 303 U.S. 444, 450, 58 S. Ct. 666, 668 [82 L. Ed. 949];

*DeJonge v. State of Oregon,* 299 U.S. 353, 57 S. Ct. 255 [81 L. Ed. 278]

(no specific page is mentioned, but page 264 might well have been mentioned);

*Grosjean v. American Press Co.,* 297 U.S. 233, 244, 56 S. Ct. 444, 446 [80 L. Ed. 660];

*Near v. Minnesota,* 283 U.S. 697, 707, 51 S. Ct. 625, 627 [75 L. Ed. 1357];

*Stromberg v. Carlson,* 283 U.S. 359, 368, 51 S. Ct. 532, 535 [75 L. Ed. 1117, 73 A.L.R. 1484];

*Gitlow v. New York,* 268 U.S. 652, 666, 45 S. Ct. 625, 629 [69 L. Ed. 1138]

(at pages 627, 673 of this case is found the dissenting opinion of Mr. Justice Holmes, which dissenting opinion with regard to the clear and present danger rule states the law as now accepted).

Now bearing in mind that the protection of the First Amendment—freedom of worship, freedom of

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speech, freedom of the press, freedom of assemblage and freedom of petition—the cases cited by this Court in the *Thornhill* decision cover several of those rights.

*Schneider v. State,* as stated above, referred to free speech as expressed by the distribution of handbills in connection with a picket line or other peaceful activity. *Lovell v. City of Griffin* covered the same subject matter—handbills. *DeJonge v. State of Oregon* involved the right of peaceful assemblage, and a Communist agitator was set free by this Court because he has not at the particular Communist Party meeting which he had attended done or said anything unlawful. *Grosjean v. American Press* was in protection of the right of freedom of the press.

*Near v. Minnesota* also secured freedom of the press even where the newspaper involved was a scurrilous, libelous sheet. *Stromberg v. Carlson* extended the right of free speech to include the display of a red flag. *Gitlow v. New York* was one of the sedition cases arising out of the First World War, and this is one of the earliest cases where this Court, in majority opinions and in dissenting opinions of Justices Holmes and Brandeis, began to emphasize more and more clearly the clear and present danger rule. From *Thornhill v. Alabama* down to the present this right of peaceful picketing in connection with a labor dispute has been upheld by this Court. Statements are found among these decisions as among the decisions of the Supreme Court of California and of other Courts to the effect that this right is subject to rea-

sonable regulation. Somewhere in the brief of petitioners it is stated that a pattern has been laid out which fixes the limitations on this right, and counsel is entirely correct as to that statement.

This Court has held that the right to picket does not include the right to picket with extreme violence (*Milk Wagon Drivers v. Meadowmoor Dairies,* 312 U. S. 287, 61 S. Ct. 552 [85 L. Ed. 836, 132 A.L.R. 1200]). But it was made clear in that case that the prohibition upheld by this Court had to do only with the violence and not with the picketing. But the Court in that case said (at page 297):

> "We do not qualify the *Thornhill* and *Carlson* decisions. We reaffirm them. They involved statutes baldly forbidding all picketing near an employer's place of business. Entanglement with violence was expressly out of those cases. The statutes had to be dealt with on their face, and therefore we struck them down. Such an unlimited ban on free communication declared as the law of a state by a state court enjoys no greater protection here."

And on page 298 the Court said:

> "The injunction which we sustain is 'permanent' only for the temporary period for which it may last. It is justified only by the violence that induced it and only so long as it counteracts a continuing intimidation."

In *Carpenters v. Ritter's Cafe,* 315 U.S. 722 (at 727) the Court upheld the right of carpenters and painters to picket an unfair contractor, but upheld the

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state Courts of Texas in limiting the permissible picketing to the area or nexus of the dispute. However, the Court (at page 727) distinctly upheld the right of picketing under the circumstances present here, that is, in support of the secondary boycott, by affirming the *Wohl* case, that day decided. In *Bakery and Salesdrivers v. Wagshal,* 333 U.S. 437, the Court refused to allow picketing for the purpose of collecting a private debt, enforcing the same rule mentioned in the oft quoted rule in *Dorchy v. Kansas,* 272 U.S. 306, 47 S. Ct. 86, where the state law prohibiting a strike for the purpose of collecting a private debt was upheld.

Bearing in mind that the rights protected by the First Amendment are cognate, that they cannot be dealt with as if they were of different or diverse character, and that one cannot be destroyed or abridged without abridging all the others, it might be well to mention four or five other decisions of this Court which have upheld these fundamental rights. In *Hague v. Committee,* 307 U.S. 496, this Court upheld the right of peaceful assemblage. In *A. F. of L. v. Swing,* 312 U.S. 321 (decided at the same time as the *Meadowmoor* case, *supra*), the Court upheld the right of peaceful picketing in a dispute between an employer and a group of workers who were not his employees, thus recognizing that a union of workers is interested in labor conditions throughout the industry, as stated by Mr. Chief Justice Taft in the old *Tri-City* case (*American Steel Foundries,* 257 U.S. 184, 209) and a similar ruling in *Cafeteria Employees*

*v. Angelos,* 320 U.S. 293; also in *Bridges v. California,* 314, U.S. 252, where the clear and present danger rule was applied in a case where the particular statements made had been held to be in contempt of Court; and lastly, *Thomas v. Collins,* 323 U.S. 516, a most important case, where the rights of assemblage was held by this Court to be so important that a labor organizer could not be obliged or required to register with a state agency before proceeding with his organizing work.

A steady adherence of this Court to the right of the freedom of speech in its various manifestations, including the right of peaceful picketing in a labor dispute, answers every contention of the petitioners here, that this right of peaceful picketing pursuant to a peaceful boycott in a peacefully carried on labor dispute can be abridged by a trial Court anywhere in America.

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## VII.

### THE SO-CALLED HOT CARGO ACT WAS UNCONSTITUTIONAL AND VOID UNDER ALL OF THE CONTROLLING AUTHORITIES.

One of the specifications of error urged by petitioners is that the Supreme Court of California erred in holding the Hot Cargo Act unconstitutional. If the Supreme Court of California was correct in its decision, whether under the state or the federal constitutional provisions, manifestly the Superior Court of Los Angeles had no jurisdiction to issue the injunction

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which it did issue, and this proceeding must be dismissed. The opinion of the Supreme Court of California gives the best answer to this contention. (30 Cal (2d), page 643.)

Now there has been entirely too much glittering generality in the arguments attempting to restrict the constitutional rights of labor unions in controversies like the one at bar. These generalities have consisted of sentences taken out of their context to the effect that peaceful picketing may be limited, that is, subject to regulation, etc. In order to get down to the issue actually before the Court let us look at the words actually used by the legislature of California in this Act.

The Act (California Lab. Code, sec. 1131ff) defines the two terms "hot cargo" and "secondary boycott" and declares each of the particular acts or processes to be unlawful. Hot cargo is defined in Section 1134(a) as "any combination or agreement *resulting in* a refusal by employees to perform services for their employer because of a dispute between some other employer and his employees and a labor union. The Supreme Court of California held that this language means what it says and makes unlawful any agreement which might result in a refusal by employees to render services. The Supreme Court points out that this could cover any agreement of any kind by any group, and it is clear that it would include a resolution by a ministerial association or by a board of trade or by a mothers club or by any group of people

whatsoever which might have as a result the refusal by some body to handle goods produced by some particular concern who might be engaged in a labor dispute. There could be no question here of severability unless, as the Supreme Court of California pointed out, the Court should be required to rewrite the legislation.

Section 1134(b) defines secondary boycott as "any combination or agreement" to cease performing or to refuse to perform or to persuade any one else to refuse to perform services or to cause any loss or injury to an employer to induce him to refrain from doing business with some other employer, or to refrain from handling the products of some other employer. This involves the right to refuse to work on certain goods, which has long been held to be an indefeasible right of workers. There is no limitation whatever upon the inhibition. None of the qualifications referred to in *Thornhill v. Alabama* (page 99) are found, namely, "the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute". This would cover the refusal to handle the goods of an employer for pure reasons of health because the proper sanitary regulations were not complied with (if such were the cause of the primary dispute) or for any other reason for which Americans have always had the right to refuse to buy goods from any body, just as they have the affirmative right to

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buy goods from any body if their choose. Persuasion may be used under the California rule so long as it is peaceful and honest, either to persuade people to buy goods (*McKay Jewelers v. Bowron* (1942), 19 Cal. (2d) 595, where the Supreme Court of California struck down an ordinance of the City of Los Angeles which would have abridged the right of a merchant to sell goods by public outcry from his own front door, and the decision was based partly upon the fact that a group of workers would have the right to assemble in front of the door and urge people not to buy), or to refuse to buy (*Pierce* case, supra, p. 76). This is the California rule which was upheld in the decision of the *Blaney* case. (30 Cal. (2d) 643.)

Counsel points out that the word "picketing" is not mentioned anywhere in the statute. Everybody knows, however, that picketing was one of the means of publicity or persuasion sought to be prohibited by the act. And it is highly significant that the only act of these defendants which is alleged to have been in contempt of Court was the act of picketing. In fact, for some reason counsel saw fit to annex as exhibits (at pages 40a and 40b of the Record herein) photographs of the picket line. The members of the Court are invited to glance at these two exhibits. Note the completely peaceful attitude of the men and their smiling countenances.

These photographs are presented by the petitioners here and presumably are meant to prove their case in some respect. They are the only photographs which present the picket line. It will be observed that there

are three pickets, which of course negatives the idea of mass picketing; the men are smiling, which shows that there were no threats or menace of any kind. In fact, when the case is tried before the trial Court, if it ever is, photographs such as these would be very convincing to the Court as to the manner of the picketing for which these men were ordered to jail.

The hot cargo statute fits precisely and exactly with the language of this Court in *Thornhill v. Alabama,* where the statute of the State of Alabama was condemned because it "does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and persuasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." (Pages 97 and 98.) If the California legislature had desired to pass an act which would have prohibited forcible action in a labor dispute or untruthful statements, such as were respectively condemned by the Supreme Court of California in *Steiner v. Long Beach Local,* 19 Cal. (2d) 676, and *Magill Bros. v. Bldg. Service Etc. Union,* 200 Cal. (2d) 506, 511, the legislature could have passed such a statute, but since they dragged within the ambit of the statute acts otherwise deemed to be lawful, the statute must stand or fall on its face.

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A statute so broad as this one is certainly too general to advise a person as to whether he is violating it or not, as pointed out so clearly by the Supreme Court of California in the *Blaney* case, 30 Cal. (2d) 643, 654.

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This *amicus curiae,* the California State Federation of Labor, carried the burden of the fight against the Hot Cargo Act from its first passage by the legislature to its final invalidation by the Supreme Court of California in the *Blaney* case. This *amicus curiae* has urged upon this Court in the foregoing brief:

(1) That the petitioners have no standing in Court due to their failure to present any constitutional issue to the California Supreme Court;

(2) That the case is moot due to the dismissal with prejudice by Farmer Bros. of their complaint;

(3) It was also urged that the case at bar was properly decided by the Supreme Court of California under the long and well settled rules of California law; and,

Finally, that the decision of the Supreme Court of California in the *Blaney* case, which is sought to be injected into this proceeding, was decided correctly under the California Constitution and that the California rules of law, as well as under the provisions of the First and Fourteenth Amendments to the Constitution of the United States and the long line of decisions of this Court upholding the same.

*Amicus curiae,* California State Federation of Labor, asks that this proceeding be dismissed.

Dated, San Francisco, California,
December 20, 1948.

JOHN C. STEVENSON,
MATHEW O. TOBRINER,
CLARENCE E. TODD,
*Of Counsel.*

*Attorneys for Amicus Curiae,*
*California State Federation of Labor.*

**(Appendix Follows.)**

## Appendix

*In the Supreme Court of the United States*

OCTOBER TERM, 1948

No. 191

The Superior Court of the State of California in and for the County of Los Angeles and Farmer Bros. Co. (a corporation), the real party in interest,

Petitioners,

vs.

Gay Lillefloren, Russell Marks, L. L. Sylvane, Homer Ford and Irv Magisen,

Respondents.

CONSENT TO THE FILING OF AMICUS CURIAE BRIEF.

We, the undersigned, being respectively the attorneys for the petitioners and attorneys for respondents in the above-entitled matter, hereby consent to the

filing of a brief *amicus curiae* by Clarence E. Todd, John C. Stevenson, and Mathew O. Tobriner.

Dated this 29th day of November, 1948.

Russell E. Parsons,
Attorney for Petitioners.

V. P. Lucas,
Attorney for Respondents.

David Sokol,
Attorney for Respondents.

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JANUARY 10, 1949.

*Per Curiam Decisions.*

No. 191. SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES ET AL. *v.* LILLEFLOREN ET AL. Certiorari, *ante*, p. 811, to the Supreme Court of California. Argued January 5, 1949. Decided January 10, 1949. *Per Curiam:* It appearing that there is a non-federal ground, independent of the federal ground, and adequate to support the judgment of the lower court, the case is dismissed for want of jurisdiction. *Fox Film Corp.* v. *Muller*, 296 U. S. 207; *Lynch* v. *New York ex rel. Pierson*, 293 U. S. 52. *Russell E. Parsons* argued the cause for petitioners. With him on the brief was *Harold W. Kennedy*. *Herbert S. Thatcher* and *David Sokol* argued the cause for respondents. With *Mr. Thatcher* on the brief were *Henry G. Bodkin*, *J. Albert Woll* and *James A. Glenn* for Lillefloren et al., respondents; and *Mr. Sokol* filed a brief for Sylvane et al., respondents. *John C. Stevenson* and *Mathew O. Tobriner* filed a brief for the California State Federation of Labor, as *amicus curiae*, urging that the case be dismissed. Reported below: 31 Cal. 2d 439, 189 P. 2d 265.

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